

**CALL TO ORDER:** Chairman Carlson called the meeting to order at 7:00 p.m.

**PRESENT:** Chairman Kent Carlson and Commissioners Barbarajean Brandt, Brandon Gustafson, Scott Hemink, John McGary, Gen McJilton and Pete Onstad

**ABSENT:** None

**OTHERS PRESENT:** Council Liaison Darel Gustafson and Zoning Coordinator Gus Karpas

### **MINUTES OF October 15<sup>th</sup> 2013**

Motion by Commissioner Gustafson, seconded by Commissioner Onstad, to approve the minutes of October 15, 2013. Motion carried 6-0-1. Commissioner Hemink abstained.

### **PUBLIC HEARINGS**

**Conditional Use Permit Request - Guangxiu Gao, 18285-B Minnetonka Boulevard** - Request to operate a therapeutic massage business in the C-1 Commercial District.

Section 1305.02(1)(94) of the Deephaven Zoning Code states that physical culture and health services, reducing salons and masseurs are permitted by conditional use permit.

Zoning Coordinator Karpas summarized the request. The applicant is seeking a conditional use permit to operate a therapeutic massage business at 18258-B Minnetonka Boulevard. The rental space is located within Deephaven Court. The applicant has addressed the issues related to character of the neighborhood, transportation, parking, signage, business hours and property values in their application. The application notes the property is zoned R-1, Commercial and the proposed use is permitted by Conditional Use Permit. The property is located along Minnetonka Boulevard, which is a main thoroughfare in the city, limiting impact on the traffic pattern. Parking required to operate the business is minimal and can be accommodated by the existing shared Deephaven Court parking lot. Signage will be limited to the permitted signage as approved by the original special use permit for the Deephaven Court development. Hours of operation will be limited to those permitted by the ordinance. The applicant does not anticipate any negative impact on the property values of the subject and surrounding properties.

Karpas said that though he initially recommended approval for the request based on the criteria currently contained in the ordinance, upon further review and consideration, he felt it may be prudent to continue the request and instead make a motion recommending the Council consider adopting a moratorium on conditional use requests until a study can be completed on their impact on adjacent residential areas and whether the current review criteria outlined in the ordinance is sufficient in regulating the variety of conditional uses permitted in the ordinance.

Bill Burrows, a friend of the applicant, said that Ms. Gao is a recent citizen that has a problem with speaking English so he would be helping her present the request. He distributed information to help establish Ms. Gao's credibility including association memberships, certificate of liability insurance, information on her coursework from a massage school in Roseville, CPR and first aid certificates and documentation of hours of therapeutic massage. He noted that even though there currently aren't any state or county mandated licenses, Ms. Gao has taken coursework to become federally licensed. He said Ms. Gao is willing to comply with all existing ordinances to operate her small business.

Chairman Carlson asked Mr. Burrows relationship with Ms. Gao. Mr. Burrows said he has no business relationship with Ms. Gao, but his business practice involves municipal work which allows him to help her navigate the process.

Chairman Carlson opened the public hearing.

Joanie Holst, 121 Bushaway Road, Wayzata, said she was not for or against the request. She said, as a massage therapist and instructor at a Twin Cities therapeutic massage school, she would like to offer her services to the city if they are looking to amend their ordinances to regulate massage businesses. She has helped other cities in the past. She is one of many other massage therapists that have lobbied to have a state licensing process put in place. As a professional, she would like to see the City of Deephaven have more stringent regulations. Ms. Holst listed a number of criteria other cities require, including national certification and hours of actual experience. Commissioner Brandt clarified Ms. Holst's residence. Ms. Holst said she lives in Wayzata, but does own a massage business in Minnetonka.

Beth Bergan, 19355 Lake Avenue, said she also taught at a massage school, focusing on ethics. She admitted that she was very suspicious when she first heard of the request. She thanked the applicant after hearing all the work she has done to this point, but said Ms. Gao has still only taken entry level exams and holds certificates that all massage therapists would be expected to have. She questioned how the hours of experience were calculated, noting some schools include class time in their calculation. She said there are only two schools in Minnesota that have certification recognized nationwide. The school Ms. Gao attended is not one of them. She agrees the city has to look at licensing the use within the city since there is no other oversight.

Hearing no further public comment, the hearing was closed.

Bill Burrows agreed that a state licensing requirement would put the whole issue to rest, but there is no such thing. He said the city can put a licensing requirement in the ordinance and Ms. Gao would apply for it and could even offer her insight during the drafting of the ordinance. He doesn't believe the school Ms. Gao attended has anything to do with the application and noted the school mentioned by those who spoke as part of the public hearing is expensive. Ms. Bergan disagreed with that comment. Mr. Burrows agree with the concepts about licensing, but believes she has met the criteria for the conditional use permit.

Chairman Carlson said the request complies with the current criteria, but the consideration is to change those criteria, not based only on or for this request, but for all conditional use requests going forward.

Commissioner Hemink expressed concern whether such action was appropriate given there was an application before the Commission.

**Planning Commission Action:**

Motion by Chairman Carlson to recommend that the Conditional Use Permit request of Guangxiu Gao to operate a therapeutic massage business at 18258-B Minnetonka Boulevard be continued and that the Council consider establishing a moratorium on conditional use permits to allow for the study of their impact on the adjacent residential areas and whether the current review criteria outlined in the ordinance is sufficient in regulating the variety of conditional uses permitted in the ordinance. Motion seconded by Commissioner Gustafson.

Commissioner Hemink questioned how this request is any different than the existing massage therapy that takes place in the city. Zoning Coordinator Karpas said the city does currently have a "stand-alone" business offering only therapeutic massage. Therapeutic massage is offered as salon packages at various businesses in the city. Hemink feels that is splitting hairs and isn't sure what the difference is.

Commissioner Gustafson said the motion is seeking to make a point that the ordinance needs more clarity when reviewing conditional use permits. Commissioner Hemink questioned why the urgency now and said he doesn't feel good about tabling a pending application. He said there are a number of business that don't require state licenses that are legitimate and those that require a number of state and

federal licenses, such as financial planners, which there are still illegitimate from time to time. It doesn't feel like a good decision to continue the request if she meets the requirements of the current ordinance.

Commissioner Brandt agrees. If the city feels a stand-alone therapeutic massage business is something it did not want, it should have been something it addressed prior to this application. Commissioner Hemink said any licensing requirement created by the city must also apply to those already operating within the city. Brandt doesn't feel the application is outside the realm of what already exists in the city and is in compliance with the ordinance requirements. Hemink agreed and said he has no problem reviewing the conditional uses in the ordinance and whether the criteria used to regulate them are appropriate, he just doesn't believe it is appropriate to do so in a manner that impacts the current application. Commissioner Onstad agreed.

Chairman Carlson feels the current ordinance does not require enough information to permit the city to make an informed decision on some requests. Commissioner Hemink argued the city already has businesses that offer the same service.

Commissioner Gustafson thought the Commission had to develop its own conditions when he first saw the application and he had no clue where to start. He noted the current ordinance is too vague.

Zoning Coordinator Karpas agreed and stated the current criteria is very basic and applies to all conditional use requests be it the current request, the auto repair shop that was before the city last year and even the lighted sign reviewed last month. The same review criteria are used, though you have three very different uses. He feels there are legitimate grounds for reviewing the conditional use criteria as well as the permitted conditional uses.

Council Liaison Gustafson said the conditional use permit process allows for a pause in the planning process. This allows the city to look at how a use will impact the entire community. He said a conditional use permit does not have an end date and he doesn't believe it's unreasonable to take some time to study the current regulations to see if there may be some reasonable changes necessary to protect the citizens moving forward.

Commissioner Hemink felt that would be a perfect argument if the proposed use was the first of its kind, but it's not. Commissioner Brandt asked about the regulation process, would it be a limitation on the number of any one type of use, the review of pertinent licenses. She asked whether the city checks to see if the Cottagewood Store has had its current health inspection. She's seeking some clarity on what type of changes the city would be looking for in the ordinance.

Chairman Carlson said he doesn't have the answers to questions like that tonight and won't until there is further discussion on the issue if that is the desire of the Council.

Commissioner McJilton asked about the timeline of a moratorium, how long it would be in place. Zoning Coordinator Karpas said he was unsure. She said it appears some changes need to take place in the ordinance to address conditional use permits. Commissioner Hemink agrees, but doesn't believe putting a moratorium in place prior to acting on this application is necessary.

Chairman Carlson called the question on the motion to continue the request and ask that the Council consider a moratorium on conditional use permit. Motion carried 4-3. Upon roll call vote, Commissioners Carlson, Gustafson, McGary and McJilton voted aye. Commissioners Brandt, Hemink and Onstad voted nay.

**Variance Request - Katherine Leith and Thomas Lang, 19515 Rosedale Avenue** – Variance of the minimum required east side yard setback to construct a detached garage at 19515 Rosedale Avenue.

Section 1310.02 of the Zoning Ordinance requires an east side yard setback of twenty-five feet. The proposed detached garage is setback ten feet, three inches from the east property line. A variance of fourteen feet, nine inches of the required east side yard setback is being sought.

Zoning Coordinator Karpas summarized the request. Thomas Lang and Katherine Leith have made application for variance to construct a two-story detached garage with a five hundred and ninety-eight square foot footprint which would encroach into the required twenty-five foot east side yard setback. There would be a total of nine hundred and sixty-three square feet of total floor area in the proposed structure. The applicant's property currently has a large "dug out" area on the south east portion of their property. They are proposing to place approximately half of the proposed garage foundation into that depression in order to limit the height of the proposed structure.

Chairman Carlson opened the public hearing. Hearing no public comment, the hearing was closed.

Tom Lang distributed photos of the property to give perspective to the Commission.

Commissioner Gustafson asked about the swale, noting the proposed driveway would cut the water flow. Mr. Lang said the driveway currently exists as a gravel drive and the intent is the keep it as is with just some minor re-grading. He felt it would be overkill to install a culvert under the driveway.

Commissioner Hemink noted nothing stops the applicant or a future property owner from paving the driveway and stemming the flow along the swale. Chairman Carlson asked if a culvert would be a reasonable condition. Hemink said it would only benefit the property owner not to pave the driveway since the only water impact would be on their property, so it probably isn't necessary.

Commissioner Gustafson believes controlling the flow of water is more important than setbacks and since the only way the place the garage in compliance with the setbacks on the property would impact the swale, he supports the request.

Commissioner Onstad asked how the applicant intends to use the garage. Mr. Lang said the garage would be used to park vehicles since there are a number of teenage drivers and the second story would be used for storage.

Commissioner McGary asked about the calculation of accessory structure area. Zoning Coordinator Karpas said the ordinance is not clear on how it is calculated and he recalled it being interpreted by the Council as including both floors on a multi-leveled structure a number of years ago, so he applied that principal with this request.

Commissioner McJilton was supportive of the request.

Commissioner Brandt asked about the swale. Mr. Lang said it is a natural swale that seems to have grown over the years as properties in the area have been redeveloped.

Chairman Carlson asked if there were any plans to install sewer or water to the structure. Mr. Lang said there were not.

### **Planning Commission Action**

Motion by Commissioner Hemink to recommend the City Council accept the recommendation of Staff to approve the variance request to encroach fourteen feet, nine inches (14'-9") into the required twenty-five (25) foot east side yard setback for the proposed detached garage at 19515 Rosedale Avenue, as presented.

**The motion is based on the following findings:** (a) the purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city. The proposed detached garage

takes advantage of an existing topographical feature on the property to minimize the impact of the garage on the adjacent property; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city; (c) the construction of a detached garage is a reasonable use of residential property; (d) the existing home was constructed in 1955 and contains a small garage which is not suitable for the needs of the family which includes multiple cars and typical property maintenance equipment such as a lawnmower and snow blower. There is a large swale that runs from the southwest corner of the property to the northeast corner. Placing the garage anywhere on the lot in compliance with the ordinance would put it in the path of that swale and disrupt the drainage pattern in the neighborhood; and (e) the proposal would not alter the essential character of the locality since the visual impact will be muted by the natural vegetation that surrounds the proposed structure.

Motion seconded by Commissioner Gustafson. Motion carried 7-0.

### **OLD BUSINESS**

None

### **NEW BUSINESS**

**Ordinance 13-65, Amending Section 1300 – Definitions** – Discuss an ordinance amending Deephaven ordinance code section 1345, amending the definition of "Height of Building."

Karpas explained as part of amending the ordinance to regulate height, taking it from an average height to an overall height, the definition must be changed in the zoning ordinance. Included in the memo is the existing, lined and proposed language. The Planning Commission is to review the language and schedule a public hearing for their December meeting.

Commissioner Gustafson suggested a change in the order of words to clarify the intent of the ordinance.

The Commission agreed and directed staff to schedule a public hearing for the December 17<sup>th</sup> meeting.

### **LIAISON REPORT**

Council Liaison Gustafson said the Council approved the conditional use application for 18128 Minnetonka Boulevard and variance applications for 20165 Cottagewood Road, 3520 Deephaven Avenue and 19005 Highland Avenue.

He said the Council also directed the Planning Commission to discuss the idea of establishing a moratorium on conditional use permits, but noted the Commission has already done so.

### **ADJOURNMENT**

Motion by Commissioner McGary to adjourn the meeting, Chairman Carlson seconded. The meeting adjourned at 8:30.

Respectfully submitted,  
Gus Karpas  
Zoning Coordinator