

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, OCTOBER 2, 2017
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Steve Erickson, Tony Jewett, and Kent Carlson

ABSENT: Councilmember Darel Gustafson

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

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

- A. Approve September 18, 2017 & September 25, 2017 City Council Minutes
- B. Approve Verifieds
- C. Appoint Doug Nagle to Planning Commission
- D. Accept Resignation of Jim Friedlander from Boat Committee

Seconded by Councilmember Carlson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARINGS**

- A. **Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 45-17**

Mayor Skrede called the public hearing to order at 7:03 p.m. Hearing no comments, the public hearing was closed at 7:04 p.m.

Administrator Young presented the assessment roll on the delinquent sewer/storm sewer, water, and garbage/recycling charges for Council review. He stated that the total assessments are running approximately \$6,000 higher than had been the case in the past but noted that residents have until November 17th to pay off the assessment prior to submitting the assessments to Hennepin County.

He stated that Minnesota State Statutes grants cities the authority to assess delinquent utilities, garbage and recycling bills and the City of Deephaven has historically used this authority to recover past due bills.

Motion by Councilmember Erickson to adopt Resolution No.45-17, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Carlson. Motion carried 5-0.

B. Public Hearing on the assessment of an abatement of a public nuisance regarding the cost of removing a hazardous tree – Adopt Resolution No. 46-17

Administrator Young stated that this assessment pertains to the costs associated with the removal of a hazardous tree on private property and the assessment was paid in full last Friday. He stated that no further action is needed by the City Council on this assessment.

6. PLANNING & ZONING REQUESTS

A. Consider the variance requests of Kent and Mary Carlson, for the property at 20505 Lakeview Avenue, to encroach 3 feet into the minimum required front yard setback and to exceed the maximum permitted grade alteration by up to 1 foot in order to build a new house on the property.

Zoning Coordinator Cooney presented the staff report. He said that Kent and Mary Carlson, property owners, are requesting variances to encroach in the minimum required front yard setback and to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 20505 Lakeview Avenue.

He said that Section 1302.05(3) of the city ordinance requires a minimum front yard setback of 35 feet. Cooney said that the applicants are proposing a front yard setback of 32 feet and are seeking a variance of 3 feet from the minimum required front yard setback. He noted that the existing house is setback 7 feet, 6 inches from the property line, and the proposed house would significantly reduce the non-conforming footprint.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. He said that the applicants are proposing land alteration of up to 4 feet, and are seeking a variance of 1 foot from the maximum permitted land alteration. He stated that the proposed grading will fill in a tuck-under garage area of the original house and, as proposed, will return this disturbed area of the property to a more even topographic layout.

Cooney noted that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. He said that the applicant is proposing a house that has a narrowest dimension of 12 feet, 10 inches for the area that connects the main living area to the garage. He said that a variance of 12 feet, 2 inches from the minimum required house width is required. Cooney said that the city has typically allowed these types of narrow areas in a house as long as the main body of the house exceeds house width requirements, as it does in this particular situation.

Cooney said that he recommends approval of the variance requests to encroach into the minimum required front yard setback by 3 feet, to exceed the maximum permitted grade alteration by 1 foot, and for a variance of 12 feet, 2 inches from the minimum required house width for the property at 20505 Lakeview Avenue, as proposed and based on the following findings:

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

Yes. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the setback and grade alteration standards on the lot. As proposed, the property would significantly reduce the front yard setback non-conformity and bring the grading of the lot to a more even and natural state. Both of these outcomes are in harmony with the purpose and intent of the ordinance.

(b) Is the variance consistent with the comprehensive plan?

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties.

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

Yes. The existing tuck under garage carved out a large low area on the property. For the house, the existing lot is oriented towards the street such that the front setback is also the narrow dimension on the lot. This created difficulties in siting the house without encroaching into the front setback. The proposed encroachment is a significant reduction from existing conditions.

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

The proposed grading and setback variances would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to other homes within the area.

Cooney said that the Planning Commission held a public hearing at their September 19 meeting and, on a 6-0 vote, recommended approval of the variance request as presented based on the recommendation and findings of staff.

Cooney concluded his staff report.

Councilmember Carlson said that he would abstain from the vote on the request.

Mayor Skrede said that the narrow portion of the house is not primary living space and serves as more of a connection. Councilmember Carlson said that the space contains a mudroom, a bathroom, and a stairway.

Motion by Councilmember Jewett to approve the variance request of Kent and Mary Carlson as proposed based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Erickson. Motion carried 3-0. Councilmember Carlson abstained.

B. Consider the variance request of Phil Smith, for the property at 20035 Manor Road, to exceed the maximum permitted grade alteration by up to 4 foot in order to regrade areas of the currently vacated property.

Zoning Coordinator Cooney presented the staff report. He said that Smith Partners, Inc. recently purchased the property at 20035 Manor Road and that in anticipation of starting construction this fall, the applicant is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a driveway and a new house on the property. He said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. He said that the applicant is proposing land alteration of up to 7 feet, and is seeking a variance of 4 feet from the maximum permitted land alteration.

Cooney said that the property was created via the subdivision process in 2007, but has remained vacant since then. He noted that the lot is surrounded by wetlands, is steeply graded in some areas, and has many topographic challenges. He said that the creation of a driveway requires significant grade alteration to access the building pad area of the lot and that the proposed driveway area leading to the building pad is bowl shaped and slopes towards the adjacent wetland. He said that while a driveway could be built to comply with the 3 foot grading limitation, the resulting driveway would have a grade in excess of 10% which would create safety concerns, particularly during the winter. Cooney noted that a portion of the south façade for the proposed home would also exceed the grading limitations by less than 1 foot.

Cooney said that the property contains portions of two wetlands, however the topography creates significant separation between the wetlands buildable area of the house. He said that the wetland boundaries were approved by the Minnehaha Creek Watershed District on June 30, 2017. He noted that the Minnehaha Creek Watershed District will review the survey and issue permits at the building permitting phase.

Cooney noted that the property currently has access to City of Shorewood sewer and water.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 4 feet for the property at 20035 Manor Road, as presented, based on the following findings:

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

Yes. The purpose and intent of the ordinance is 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 which is the case in this proposal.

Is the variance consistent with the comprehensive plan?

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. In light of the topographic conditions, the proposed grading is reasonable to make this raw property both buildable and accessible.

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

Yes. The property has significant topographic challenges as it drops off steeply towards the adjacent wetlands. It has never been graded for residential purposes, and therefore additional regrading is required to create driveway access and a buildable area.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to what exists today on nearby properties in this community.

Cooney said that the Planning Commission held a public hearing at their September 19 meeting and, on a 6-0 vote, recommended approval of the variance request based on the recommendation and findings of staff.

Cooney concluded his staff report.

Mayor Skrede said that he was happy to see that the watershed district has done their due diligence on the property. He said that having the large turnaround area of the driveway towards the house seems like a public safety issue since the driveway is so long.

Councilmember Carlson said that reducing the driveway grade is a public safety issue.

Councilmember Jewett asked if the driveway was mostly adding fill or removing fill. Phil Smith, applicant, said that it was almost all adding fill. He said that they are effectively trying to make a flat space on a hillside and that getting the required width quickly creates the need for 7 feet of fill. He said that the fill would come from the house excavation.

Councilmember Jewett asked about the grading variance near the house. Smith said that the house is built on the existing contours of the land except for lookout windows to the southeast where the grading variance is also requested.

Motion by Councilmember Erickson to approve the variance request of Smith Partners, Inc. as proposed based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Jewett. Motion carried 4-0.

C. Other Business

Cooney asked about next steps from the public meeting regarding The Pines neighborhood that was held on September 28th.

Mayor Skrede said that he would like a full evaluation from the Planning Commission whether new rules are warranted or not. He said that it would be important to see visual examples of any new height restrictions in context. He said that it is difficult to imagine the impacts of proposed changes without seeing them in context.

Councilmember Carlson said that the city could provide height cross sections to demonstrate the impacts of the changes.

Mayor Skrede said that visuals are important and that some of the comments at the public meeting noted that the new house on Leroy Street was not as big as some people had feared.

Councilmember Erickson said that there are many variations within a height limit and that a 1.5 story house at 28 feet would look less impactful than a house with a flat roof at 28 feet.

Councilmember Jewett said that he would want to know the City of Minnetonka's height requirements for the adjacent neighborhood.

7. UNFINISHED BUSINESS

A. Accept Resignation of Police Officer Matt Case

Police Chief Johnson stated that Officer Matt Case has submitted his letter of resignation effective October 18, 2017 and will become a police officer with the Metropolitan Airport Commission.

Mayor Skrede stated that Matt has been a good officer and a good contributor to the Deephaven Police Department.

Motion by Councilmember Erickson to accept the resignation of Matt Case, effective October 18, 2017, and wished him the best of luck in his new career. Seconded by Councilmember Carlson. Motion carried 4-0.

B. Authorize Proceeding with the Hiring Process for a New Police Officer

Police Chief Johnson stated that with the resignation of Matt Case, he would like to continue with the hiring process to bring in a new officer. He stated that this job has already been posted and they have received 22 applications for the position. He stated that they plan on interviewing

10 candidates tomorrow. He stated that he would like Council authorization to interview, select a final candidate, and grant a conditional offer of employment subject to the successful completion of the background check, physical exam, and psychological exam.

Motion by Councilmember Jewett to authorize the Police Department to interview candidates, select a candidate, and make a conditional offer of employment subject to the successful completion of a background investigation, physical exam and psychological exam. Seconded by Councilmember Erickson. Motion carried 4-0.

C. Authorize Final Payment to Allied Blacktop for 2017 Seal Coating Project

Administrator Young stated that Allied Blacktop has completed the seal coating of portions of Azure Road, Northome Avenue, and Rutledge Road – the same area that was resurfaced after the storm water project several years ago – and fog sealed the rear parking lot at City Hall. He stated that the seal coating portion of the project went very well but there were some application issues with the fog sealing, which were ultimately resolved. He added that the Excelsior Fire District will be reimbursing the City \$1,890.15 for fog sealing their portion of the rear parking lot.

Mayor Skrede voiced his concern regarding the problems that occurred during the fog sealing process, the subcontractor that was retained by Allied Blacktop to do the fog sealing, and whether the fog sealing was worth the effort.

Motion by Councilmember Erickson to authorize Final Payment to Allied Blacktop in the amount of \$14,153.69 for the 2017 Seal Coating Project. Seconded by Councilmember Carlson. Motion carried 4-0.

D. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Other

Mayor Skrede noted that we may have three candidates interested in serving as the City's representative on the Lake Minnetonka Conservation District. He stated that he intends to have a final candidate selected at the October 16th Council meeting.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a summary of the September 2017 Incident Report for Council review. He noted that the speed trailer has been placed on Deephaven Avenue to record the speeds of the southbound traffic.

Mayor Skrede asked to have the speed trailer placed on Park Avenue.

B. Excelsior Fire District

Councilmember Erickson provided a summary of the September 27th EFD Board work session and regular meeting. He stated that the Board approved the 2018 EFD Budget that had been approved by the five member cities and held their annual work session on staffing issues. He noted that Fire Chief Gerber is back from his deployment to the Florida Keys to assist with emergency management issues.

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:

- 2018 Health Plan Rates
- Update on the RFP Process for the Warming House Project
- Update on the Seven Hills Preparatory Academy bond issue

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson.

Motion carried 4-0. The meeting adjourned at 7:55 p.m.

Respectfully submitted,
Dana H. Young
City Administrator