

**DEEPHAVEN CITY COUNCIL MEETING  
TUESDAY, SEPTEMBER 10, 2019  
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 Melissa McNeill, Kent Carlson, Steve Erickson, and Tony Jewett

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney, and 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 August 19, 2019 Council Minutes
- B. Approve Verifieds

Seconded by Councilmember Jewett. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Matt Carle, 20400 Lakeview Avenue, stated that he had appeared before the Public Safety Committee several times to discuss the possibility of the City adopting a golf cart ordinance and had recently heard that the City Council was not interested in pursuing such an ordinance. He stated that he was curious why the Council was not interested.

Councilmember McNeill asked if Matt had watched the recording of the previous Council meeting.

Matt Carle stated that he had not.

Councilmember McNeill stated that she was not interested in pursuing this ordinance due to issues she had seen with a golf cart ordinance in another community and that there was already a vehicle, very similar to a golf cart that is already considered street legal by the State of Minnesota. She stated that if there is a similar vehicle that is already approved, why go through the adoption of a golf cart ordinance.

Matt Carle stated that he was trying to tailor an ordinance to the type of golf cart he already owns.

Mayor Skrede stated that Councilmember McNeill provided a good synopsis of our discussion and added if there wasn't a way Matt could appeal to see if his vehicle would be approved by the State.

Matt Carle stated that he hasn't gone this route.

Mayor Skrede stated if he could appeal to the State and get licensed, the City would have no problem.

Councilmember Erickson noted that approving a golf cart ordinance would open a Pandora's Box by allowing other unlicensed vehicles such as ATV's and gators.

Matt Carle suggested that the Council could tailor the ordinance to only permit golf carts.

Councilmember Jewett stated that this issue did come up at the last Park Committee meeting and discussion was held on whether residents on the east side of Deephaven would be permitted to drive their golf carts across Minnetonka Blvd. He stated that it would be difficult to craft an ordinance that would apply equally to all residents. He stated that after the discussion of this issue at the last Council meeting, it was the Council's preference to defer to the State.

## **5. PLANNING & ZONING REQUESTS**

### **A. Consider the variance requests of Craig and Kristi Weinstock to encroach into the minimum required side yard setbacks in conjunction with a home addition at 20620 Linwood Road**

Zoning Coordinator Cooney presented the staff report. He said that the property owners are proposing two additions to the existing house, including a four-car garage, both of which would encroach into the side yard setbacks. He said that while neither addition would encroach further than the closest encroachment of the existing house, the garage addition would add a significant additional footprint area into the side yard setback. Cooney said that the property is a 50,536 square foot R-2 property and that the existing house was built in 1960 according to Hennepin County records.

Cooney noted that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said that, as proposed, the smaller west addition would be 10.2 feet off of the side property line and the applicant is seeking a variance to encroach 9.8 feet into the west side yard setback. He said portions of the existing house on this side of the property are as close as 8.5 feet from the lot line. Cooney noted that the addition follows the existing line of the house on this side and gradually moves away from the property line with the south corner being 11.1 feet off of the property line. He said that, due to the fact that the addition is small and follows the existing building line of the house, he is supportive of this aspect of the request.

Cooney stated that, as proposed, the garage addition to the east was originally proposed to be as close as 8.4 feet off of the east side property line and the applicant is seeking a variance to encroach 11.6 feet into the east side yard setback. He said that portions of the existing house on this side of the property are as close as 8.4 feet from the lot line. Cooney pointed out that the proposed four-car garage does add significant additional footprint area into the side yard setback. Based on the Planning Commission's recommendation, the applicant revised the plan such that the closest encroachment for the proposed new garage would be 12 feet.

Cooney said the property is currently served by a 2-car garage which would be converted to living space. He said that, based on the current layout of the house, it would be difficult to meet the setback standards without essentially cutting off the front entry of the house.

Cooney also noted that the applicant has slightly revised their current plan to address the city engineer comments. The city engineer was recommending additional swales along the property line to help alleviate the runoff issues that may occur to the neighboring property.

Cooney said that he recommends approval with conditions of the variance request to encroach 9.8 feet into the west side yard setback, and to encroach 8 feet into the east side yard setback for the house additions at 20620 Linwood Road, as proposed. He said that his recommendation is 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 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. In this case, the applicant is seeking to vary from the stated setback standards in order to construct additions for a house, built prior to the current zoning limitations, that encroaches into both side yard setbacks.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

Yes. The proposed additions meet other zoning requirements apart from the setback standards. The request is reasonable due to the fact that the encroachments are not greater than the existing encroachments and that, given the configuration of the house; it is not practical to meet the setback standards for the additions.

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

Yes. The nonconforming house, build in 1960 currently encroaches into both side yard setbacks. The layout of the house is wide such that adding the additions, particularly the garage addition, is difficult without encroaching into the side yard setbacks. The angled front entry also creates challenges in meeting setback requirements while still maintaining appropriate access to the front of the house.

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

No. The expanded house is relatively modest relative to the locality. The proposed encroachments are set back from the adjacent houses which will minimize the impacts to the adjacent neighbors.

Cooney said that the Planning Commission held a public hearing at their August 20 meeting and, on a 5-0 vote, recommended approval of the request based on the recommendation and findings of staff. Cooney noted that the recommendation was based on the following conditions: 1) that the garage addition maintains a 12.5 foot setback and 2) that the applicant provides an engineering solution suitable to address the drainage issue.

Cooney concluded his staff report.

Councilmember Carlson said that the swale needs to be extended further to approximately the 944 elevation.

Councilmember Erickson said that there is a tree line and if the swale does not make it past that line, there is the possibility that the water would tilt towards the neighbors. He said that mitigation is not necessary and that there is a good deal of filtration and infiltration opportunities as the water heads towards the lake.

Mayor Skrede said the swale needs to be continued further and ensure that there isn't a delta at the end of the swale and so that we know where the water goes. Mayor Skrede asked Cooney to clarify the setbacks for the revised request. Cooney noted that the new proposed setback on the east side was now 12 feet, while the existing house sat 8.4 feet off of the east property line. Cooney said that the setbacks on the west remained unchanged from the original proposal but the closest new encroachment would be 10.2 feet off of the property line.

Kevin Shultz, builder for the applicant, said that perhaps a berm on the property line would be more effective than a swale. Councilmember Erickson said that the water just needs to be directed far enough to ensure that it makes the turn towards the lake. Mayor Skrede said that the property pitches back and forth and that he wants assurances that the swale would be adjusted if necessary. Shultz said that he is more than happy to make those adjustments.

Councilmember Carlson said that field verification by the city engineer would be sufficient. He said that right now the swale is not long enough.

Councilmember Jewett said that he has had conversations with the Weinstocks and that he just wants the water not to get sent his way.

Councilmember Carlson asked about drain tile and gutter design. Cooney said that there was never a formal gutter and drain tile plan that was submitted.

Mayor Skrede asked for field verification with the City Engineer. Cooney said that he would be happy to have the engineer walk the property.

Shultz offered to provide an as-built survey for the property. Councilmember McNeill said that she was about to suggest that an as-built survey be provided, so she was happy to hear that comment.

Mayor Skrede noted that the neighbor is Councilmember Jewett and that he is not requesting anything as a favor to Councilmember Jewett or as a detriment to the applicant. He said that it was important to make that comment in the spirit of full disclosure.

Motion by Councilmember Carlson to approve the variance request to encroach 9.8 feet into the west side yard setback, and to encroach 8 feet into the east side yard setback for the house additions at 20620 Linwood Road, as proposed based upon the updated plans dated September 9 and based on the findings of the Planning Commission. Councilmember Carlson's motion was subject to the following conditions: 1) that the grading be updated and reviewed and approved by city staff, 2) that any stormwater management be subject to a maintenance agreement, 3) that the applicant provide an as-built upon completion of the project, and 4) that the minimum setback for the proposed garage be 12 feet from the east property line. Motion was seconded by Councilmember McNeill. Motion carried 5-0.

**B. Consider the variance requests of Ellen Michelson to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted grade alteration, and to encroach into the minimum required lake yard setback in conjunction with a new house at 19680 Lakeview Avenue**

Cooney presented the staff report. He said the property owner is building a new house on the property which triggers impervious area, grading, and setback variance requests. He said that, currently, there is a legal nonconforming house on the property. He noted that there are lakeshore setbacks on two sides of the property, and the setbacks overlap such that there is no buildable area beyond the setbacks. Cooney said that the property is also currently nonconforming for impervious area and that the impervious area will be reconfigured and reduced as part of this proposal. He said the property is an 18,133 square foot R-3 property.

Cooney stated that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said that portions of the proposed house are as close as 26 feet and the entire house is located within the lake yard setback and that the applicant is seeking a variance to encroach as much as 74 feet into the lake yard setback. He said the property was granted a variance to expand to the existing house footprint in 2008. Cooney noted that the new house generally maintains the location on the property of the existing house, with the footprint pushed slightly south on the property. He said the footprint of the new house/decks/porches is comparable to existing with an overall expansion of 390 square feet from existing conditions.

Cooney said that the proposed house will encroach into the front setback on the property as well. He noted that Section 1302.05(3) of the city ordinance requires a minimum front yard setback of 35 feet. He said the proposed house would be 28 feet from the front property boundary (as measured from the closest point of the adjoining road) and the applicant is seeking a variance to

encroach 7 feet into the front yard setback. Cooney said that the existing house is situated 33 feet from the front property boundary, so the new footprint will be 5 feet closer.

Cooney said that he is generally supportive of the setback requests since the property has no buildable footprint area and is the last house on the street. He said the proposed lake setbacks are comparable to existing conditions and the overall impact from additional lake yard encroachments is negligible. Cooney said the front yard setback is similar to that of adjacent neighbors, and as the last house on the street would be much less impactful than those of neighboring houses.

Cooney stated that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 33.3% and is seeking a variance to exceed the maximum impervious surface area by 8.3%. Cooney noted that the property is currently at 36.6% impervious area. He said the property hosts 887 square feet of walkway easements for the neighborhood association, and while the new property owner would certainly benefit from these amenities, in his opinion it would be punitive to not give at least some credit for these walkway easements.

Cooney noted the property is 90% of the minimum lot size for an R-3 property, so it is only slightly undersized. He said a 20,000 square foot R-3 property in the shoreland district would be allowed 5,000 square feet of impervious area, and that a 5,000 square foot impervious footprint for this property would equal 27.6%. He stated that if the entirety of the walkway easements were added to that impervious area, the property would be at 32.5% impervious. He said that the applicant is requesting 0.8% (159 square feet) of additional impervious area above those two thresholds.

Cooney said that the property was granted an impervious surface coverage variance in 2008 to go up to 30.6% and since that time, it appears that there was a landscaping project that illegally expanded hardcover to its current extent. He said that expansion project included stone steps, a patio, and stone steps down to the lake. Cooney said that while the existing property is proposing reductions from existing conditions, those existing conditions were not legally granted.

Cooney said that, based on the excess impervious areas, Section 1353 of the zoning code requires a mitigation volume of 168 cubic feet, and the applicant is proposing 362 cubic feet of mitigation volume. He said that the water will be collected primarily in catch basins around the house. He noted that the applicants are limiting gutters and downspouts to a few critical areas, such as the front door and the garage. Cooney said the proposed mitigation system will grade other areas so that roof run off is collected at low points in the lawn or flower bed catch basins, which then is piped to the underground filtration system on the lower north lawn or the upper system at the driveway.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. He said the applicant is proposing grade alteration of up to 5 feet, and is seeking a variance of 2 feet from the maximum permitted grade alteration. Cooney noted that the applicant is proposing to regrade areas of the yard to accommodate

reconfigured steps and an expanded flat yard area. He stated that portions of the grade adjacent to the retaining wall for the steps would be altered by up to 5 feet.

Regarding the entry gate and pillars, Cooney said that he has typically regulated entry pillars and gates under the fences/walls regulations which are not subject to setback requirements of structures as long as they are compliant with the height and setbacks required for fences/walls. He said that he would condition any approval on compliance with these regulations.

Cooney said that he recommends approval with conditions of the variance request to encroach into the lake yard setback by up to 74 feet, encroach into the front yard setback by 7 feet, exceed the maximum allowable impervious surface area by 8.3%, and exceed the maximum permitted grade alteration by up to 2 feet, for the property at 19680 Lakeview Avenue, as proposed. He said that his motion is conditioned that:

- Entry monuments and gate comply with the fence/wall regulations in city code Section 1310.08, notably as they relate to height and setback requirements.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said the motion is based on the following findings:

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

Yes. Strict adherence to the ordinance would render the property unbuildable, and therefore reasonable accommodations need to be made for lake yard setbacks in order to replace the legal nonconforming house. The grade changes will have no impact on drainage to the neighboring properties. The impervious areas excess is proportionate to the lot size if taking into account existing walkway easements for the homeowner's association.

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. A single family home, consistent with the building limitations is reasonable. The proposed setbacks are reasonable given the limitations of the property and the location of the lot on a narrow peninsula. The grading proposal is modest overall and is a reasonable response to the grades of the property. The impervious areas are slight reductions from existing conditions with significant mitigation provided.

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

Yes. The legal nonconforming house is built on a peninsula with a lakeshore setback on two sides of the property. The setbacks overlap such that there is no buildable area within the lake yard setbacks. The property is slightly undersized for an R-3 property and contains walkway

easements, with both factors contributing to additional impervious area percentages on the property. The topography on the property creates challenges for meeting the ordinance limitations on a project of this size, and the overall topographic changes triggering the variance are in a small area between the house and the landscaped stairway.

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 proposal is of a size and scale that would be compatible with the locality and is comparable to existing conditions on the property today.

Cooney said that the Planning Commission held a public hearing at their August 20th meeting and, on a 4-2 vote with Nagle and Webster voting against, recommended approval of the request based on the recommendation, findings, and conditions of staff.

Cooney concluded his staff report.

Councilmember Erickson asked for clarification on the location of the grading variance. Petra Schwartze, architect for the homeowner showed the City Council a diagram of the area in question.

Mayor Skrede asked about the drain pipe near the driveway that drains to the lake. Schwartze said that is not part of the mitigation plan. Mayor Skrede said that the pipe is in addition to the proposed mitigation plan.

Mayor Skrede noted some of the Planning Commissioners opposition to the amount of hardcover. Councilmember Jewett said that in 2008 the property was over 46% impervious. Mayor Skrede said it was a considerable reduction at the time.

Councilmember Carlson thought it was a well thought out plan. Skrede asked about the 32.5% noted in the staff report. Cooney said that was both for the HOA paths and the substandard lot size.

Councilmember McNeill asked about the Planning Commission's concerns about hardcover. Cooney said that they were more concerned that the benchmark was 36.6% rather than the 30.6% that had been previously approved and that the hardcover seems to be creeping upward.

Councilmember Carlson said that the HOA outlot should also be a factor since that is vacant green space adjacent to this property that will remain unimproved.

Councilmember Erickson said that all of the water goes to the lake. He said that currently the water just comes out of the downspouts and drains directly to the lake. He said that the exact impervious area is not as important and attempting to filter the bulk of the water before it gets to the lake.

Councilmember Jewett said that this is the best iteration of this property from a stormwater management perspective.

Councilmember Carlson asked about a soil report. He said he would like to know what the soil situation is on the property since the infiltration is important.

Mayor Skrede said that he would like the impervious percentage to reflect the areas excluding the HOA impervious areas.

Motion by Councilmember Carlson to approve the variance requests to encroach into the lake yard setback by up to 74 feet, encroach into the front yard setback by 7 feet, exceed the maximum allowable impervious surface area by 3.5%, and exceed the maximum permitted grade alteration by up to 2 feet, for the property at 19680 Lakeview Avenue, as proposed.

He said that his motion is conditioned that:

- A soil report shall be given to the city to be included with the project documentation.
- Entry monuments and gate comply with the fence/wall regulations in city code Section 1310.08, notably as they relate to height and setback requirements.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- Construction of stormwater management facilities should be observed by a City representative to ensure system is installed as proposed. At least 24 hours' notice shall be given prior to inspection.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Motion was seconded by Councilmember Erickson. Motion carried 5-0.

**C. Consider Ordinance No. 13-19, amending Section 1310.08 of the Zoning Code regarding fences and walls**

Cooney said that the proposed changes are intended to restrict fences within the lake yard setbacks and that current city code is written in such a way that seems to allow fences up to 3 ½ feet within a lake yard. Cooney concluded his staff report.

City Administrator Dana Young noted that this is just a review of the proposed ordinance and it would be on the October agenda for possible adoption.

The City Council did not recommend any changes to the proposed ordinance before it comes back to the City Council in October.

**D. Other**

Mayor Skrede noted that James Blakeway presented information on short term rental regulations to the Planning Commission. Mayor Skrede noted that the Planning Commission seemed evenly split on the issue, and whether or not the city needs to be proactive in regulating these properties.

Cooney said that the Planning Commission wanted to review the information further before they made a recommendation. He said that some of the concerns raised were about how to enforce the regulation if there were to be one. Mayor Skrede said that he doesn't want to pass a rule that is unenforceable.

Councilmember McNeill said that the City Council would be looking for not just a recommendation, but a process for these types of rentals including possibly licensing.

Councilmember Jewett said that he has not made up his mind on the issue and that a Planning Commission recommendation would help inform the discussion.

Mayor Skrede said that the City Council would like to hear a recommendation from the Planning Commission on the issue before the City Council moves forward.

## **6. UNFINISHED BUSINESS**

### **A. Adopt Resolution No. 27-19, Approving 2019 Levy, Collectible in 2020**

Administrator Young stated that Minnesota State Statutes requires the adoption of a preliminary tax levy on or before September 30, 2019. The final tax levy will be adopted following the Truth in Taxation hearing on December 2, 2019. The final tax levy cannot exceed the preliminary tax levy.

He stated that following the review of the 2020 General Fund Budget and the 2020 Capital Improvement Fund Budget beginning with the first budget meeting on June 17<sup>th</sup>, the following 2020 preliminary tax levy has been proposed:

<b>General Fund Levy</b>	-	<b>\$2,026,288</b>
<b>Capital Improvement Fund Levy</b>	-	<b>\$ 400,000</b>
<b>Bonded Debt Levy</b>	-	<b><u>\$ 219,395</u></b>
<b>Total 2017 Preliminary Levy</b>		<b>\$2,645,683</b>

He stated that the 2020 Preliminary Tax Levy would have the following impact:

- The 2020 General Fund levy of \$2,026,288 represents a \$170,000 increase over the 2019 General Fund Levy, which is a 9.3% increase over the 2019 General Fund Levy.
- The 2020 Capital Improvement Fund levy of \$400,000 represents a \$0 increase over the 2019 Capital Improvement Fund Levy.
- The 2020 Bonded Debt Fund levy represents a \$219,395 increase over the 2019 Total Tax Levy.
- Overall, the total 2020 preliminary tax levy represents a \$389,395 (17.4%) increase over the total 2019 tax levy.

Motion by Councilmember Erickson to adopt Resolution No. 27-19, a Resolution Approving the 2019 levy, Collectible in 2020 in the amount of \$2,645,683. Motion seconded by Councilmember McNeill. Motion carried 5-0.

**B. Authorize Pay Estimate No. 1 to Bituminous Roadways for 2019 Minnetonka Blvd Project**

Mayor Skrede stated that he has heard a number of positive comments on the appearance of Minnetonka Blvd.

Councilmember Jewett agreed stating that the contractor has done good and speedy work.

Gabrielle Rohde, 18400 Minnetonka Blvd, asked about the decision on striping Minnetonka Blvd.

Mayor Skrede stated that they intend to stripe 12' drive lanes with fog lines, which will leave a 4' pathway on each side of the street.

Councilmember Erickson stated that the 4' pathways won't be marked as bike lanes since State law will only allow a bike lane to be designated as a bike lane if it is 5' in width.

Motion by Councilmember Carlson to authorize Pay Estimate No. 1 to Bituminous Roadways in the amount of \$556,027.02 for the 2019 Minnetonka Blvd Project. Seconded by Councilmember Erickson. Motion carried 5-0.

**C. Other**

Mayor Skrede provided a brief update on the Easton Road Project, which is tentatively scheduled to begin September 23<sup>rd</sup>.

**7. NEW BUSINESS**

**A. Other**

There was no other New Business this evening.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Chief Johnson provided a summary of the August activity report for Council review.

**B. Excelsior Fire District**

Councilmember Erickson noted that there was nothing new to report on the Excelsior Fire District.

**C. Public Works**

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

**D. Administration**

Administrator Young provided a brief summary on the following items:

- 2019 Building Permit Update
- Annual Comparison of Parking Permits Sold
- 2020 Budget Update
- October Newsletter

Administrator Young stated that the City of Deephaven will hold its annual Truth in Taxation hearing on Monday, December 2, 2019 at 7:00 p.m. at which time information on the 2020 budget and levy will be given and the public will be provided the opportunity to comment on the budget and levy.

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson. Motion carried 5-0. The meeting adjourned at 8:45 p.m.

Respectfully submitted,  
Dana Young  
City Administrator