

APPROVED  
Minnetonka Beach Planning Commission Meeting Minutes  
June 27, 2022

1. Call to Order

Chair Breazeale called the meeting to order at 7:00 pm.

2. Roll Call

Present: Commissioners Anderson, Blodgett, Breazeale, Halverson, Steinfeld-arrived 7:02 pm, Swanson, and Council Liaison Enlow.

Staff in attendance: Heidi Honey, City Administrator, Phil Carlson, Zoning Administrator

3. Approve Agenda

Swanson asked to re-name item 6.2. DNR Code Compliance - ADU Review

**(Halverson motion, Anderson second to approve the agenda as amended; all ayes.)** Motion passed.

4. Approval of Minutes

4.1. Regular Meeting of May 23, 2022

**(Swanson motion, Halverson second to approve the minutes; all ayes.)** Motion passed.

5. Public Hearings

5.1. Variance Request Front Yard Setback – 1928 Beach Lane (Knudsen)

Breazeale opened the public hearing at 7:03pm

Applicant Jim Knudsen thanked the commission to allow him to speak. Knudsen wants to build a screened porch on the front of the house 29 ft from the right of way in the 50 ft setback of Lafayette Road. He stated that the existing deck was included in their most recent as built survey so this build of a porch where the deck is located will only increase hardcover 24 sq. ft.

Carlson had proposed relocating the screen porch elsewhere as shown in the packet. Knudsen stated the proposed location wasn't workable because it screens off two windows to two rooms and they don't want to reduce sunlight. There is no existing door at the proposed location so they would need to install a door, and the home's roof design would eliminate a potential deck on the roof of the porch in the future. He wants the flexibility for someone to be able to add a deck on top of the porch. They would also need to move all electrical access including the four panels for their solar system.

Knudsen reviewed the variance criteria, and noted the current house is 20.5 ft off the easement and are proposing the porch 28 ft back from the easement. The houses on Lafayette sit within the 50 ft setback but theirs is set back further. Character of the location is not changed by this proposed porch. He went on to say the porch would obstruct the view of the lake for a driver heading east but that would actually make it safer. There are three large maples near the porch. The largest is a hazardous tree that has already been approved for removal by council. He will use helical piers instead of excavation for the foundation so the

other trees will not be impacted by this build. He stated this request has minimal effect on the neighborhood. The garage is 20 ft from sides and 42 ft from rear.

Breazeale closed the public hearing at 7:15pm.

Carlson stated the proposed porch would encroach in the setback but less than the existing house. In his report, he provided possible alternate locations, but Knudsen explained why those would be difficult. Carlson stated they have reasonable use of the property, but a porch is reasonable request. He stated there are reasonable arguments on both sides and it is up to community standards. He asked commissioners to review this against the variance criteria. He stated that they should include findings if they recommend approval or recommend denial.

Knudsen explained the helical coils and installing them at distances to protect tree roots. Carlson recommended that the city arborist be consulted on the use of these for adequate protection in this application.

Breazeale expressed concerns about putting more building in the setback. Commissioners discussed the odd shape of the lot. Steinfeld stated that since it is a corner lot, they are not infringing on another property like other setback requests they have considered, and this porch is the furthest point from another property. Swanson stated the code asks that non-conformities be brought into conformity. Steinfeld stated this lot looks like it is unbuildable. Commissioners reviewed the buildable area. Anderson thought the reasons that the applicant discussed for why the proposed alternate location would not work were reasonable. She stated allowing this request would not hurt anyone. She added that they need to look at the ordinance and also consider the person and why they are trying to do this and if it is reasonable. It seems reasonable to her.

Steinfeld went to the site to see if there could be a different location. Removing all of the electrical would be difficult and removing side windows and top window would be architecturally difficult. He talked about protecting the tree and Knudsen stated they would replace trees if needed but hope to preserve them. Carole Knudsen discussed how their lot and surrounding lots were divided many years ago from a single large lot, and that Beach Lane was moved, which explains the odd shape of the lot. Steinfeld stated that if Beach Lane was considered the front, then the lot would not be buildable.

Breazeale asked commissioners for their comments. Blodgett was in favor of the variance request. Steinfeld was in favor given the nature of the lot and character and added that Knudsen have done a great job of improving the lot and landscaping. Swanson discussed variance creep. Breazeale stated they have denied a lot of variance requests for a small setback. He thinks this would be a perfect place for a porch, but he is afraid of a slippery slope for granting variances for setbacks. Steinfeld stated every case needs to be looked at separately. Halverson supported it stating it is easy to uphold the code if all lots were square, but they need to look at the individual characteristics of irregular lots and be fluid with give and take for complicated circumstances. Breazeale stated that is why they have this process.

**(Anderson motion, Steinfeld second, to recommend that the City Council approve variance request to the front yard setback at 1928 Beach Lane for a porch addition that extends 21 ft into the required 50-ft setback as submitted, with these Conditions for Approval and Findings of Fact for approval:**

**Conditions for Approval:**

- 1) **The applicant will verify that the existing trees on site will not be impacted or removed for construction of the proposed porch addition and will be protected as recommended by the City arborist during and after construction, or a waiver from the tree removal moratorium will be requested and approved by the City Council.**

#### **Findings of Fact for Approval**

- 1) **The proposed use of a three-season porch addition is reasonable.**
- 2) **The location and the home and shape of the lot are circumstances not created by the applicant. Extending a screen porch out from the existing doors on the east side of the house, into the required setback, is a logical and practical solution. The location and design of the existing home make it impractical to add a porch addition in another location on the property.**
- 3) **The proposed porch would extend into the required setback, but less so than the existing home, and therefore it does not increase the encroachment of structures into the setback on this lot.**
- 4) **The porch is attractive and well designed and would not alter the character of the locality.**
- 5) **The request meets the criterial for variances in Section 2.4(C)(4) of the Zoning Code.**

**Roll Call Vote – Anderson – aye, Blodgett – aye, Breazeale – nay, Halverson – aye, Steinfeld – aye, Swanson - nay). Motion passed 4 to 2.**

#### 5.2. 2023- 2032 Capital Improvement Program

Breazeale opened and closed public hearing at 7:39 pm. No comments.

Halverson stated that the Capital Improvement Program Review Committee reviewed the CIP line by line when they met. She stated that this list is a request for everything, and it may need to be reduced. She noted that Utilities Chair Carlson asked to allocate \$20,000 to study water issues at Half Moon Park, Ray Peters runoff and Woodbridge. Pagano stated water routes to the area are by design to protect surrounding homes. Stantec looked at the area in 2015 and it has been beneficial for the water to collect in the park. Discussion was for Stantec to review their findings from 2015, determine if additional study is needed, and determine a solution to the issue. The hope is that it would cost less than \$20,000 since it has been studied already. The remaining \$80,000 would be used to fix the problem. Halverson stated there is a plan to patch and seal coat ½ of the city at a time to maintain the roads. The rip rap repair is for Arcola Bridge docks and by Lake Rd Dock 2 where there is a lot of erosion, bank undercutting and loss of shore. Parks pushed this from 2023 to 2024 for budgetary concerns but it's a pressing issue. Honey stated the iron filter replacement was moved from 2023 to 2024 because it can wait an additional year until a decision is made on the water treatment plant.

Breazeale discussed moving the \$100,000 for the water issue and moving the rip rap repair to 2023 from 2024. Raisbeck stated that Carlson asked to earmark \$20,000 to study the area with the water issue and determine a solution. Honey to look into what Stantec previously studied and see if additional study is needed to find a solution. There was discussion about the area being between Huntington Point Roads West and East and Lafayette and Woodbridge which

has been a known issue. Raisbeck did not know if Utilities discussed this specific area in the past. Swanson thought the Norling bid for the retaining wall was high.

**(Halverson motion, Swanson second, to affirm the 2023-2032 Capital Improvement Program conforms to the Comprehensive Plan and recommend approval to the City Council with comments of moving the rip rap repair to 2023 and confirming spending \$20,000 on water problem issues is advisable given previous work by Stantec on the water problem in Half Moon and Ray Peters Park; all ayes.)**. Motion passed.

There was discussion about several phases of infrastructure projects that were done in the area, some piping in Ray Peters, and storm sewer on Lafayette.

6. Old Business – 8pm

6.1. Tree Preservation Ordinance Review

Breazeale stated that the chart comparing the proposed ordinance to other communities was helpful because of feedback about concerns of possible overreach.

Task Force member Nell Mathews stated she is going to discuss: an overview of the proposed ordinance, how the task force refined the ordinance based on public hearing comments, Planning Commission comments and community feedback, and she will ask for their recommendation to City Council for adoption of the proposed ordinance. During the process of researching the per lot square footage and replacement requirements, aerial views of the city show there has been a lot of tree canopy loss. While researching this ordinance, they found the city has been trying to protect trees since the 1920s. They researched tree protection methods of other cities and provide the results in a chart in the packet. Tree preservation flows from the Comprehensive Plan which guides the city on land use and what the city wants to look like in the future. Mathews then reviewed the process to date saying: they have studied and drafted the ordinance over 15 months; Council determined a need for tree preservation by ordinance to protect the natural, valuable assets; and the decision to put together a task force was driven by council in response to DNR comments on the Comprehensive Plan in 2018 where they stated the city did great work on public tree protection but now needs to work on private tree protection. Mathews explained that the DNR's comments are important because the entire city is within 1000 ft of the lake, and many other surrounding cities are not. Tree removal causes run off to the lake and there are water issues in the city. Mathews then stated that when the driveway went in on the Northwoods easement, the city attorney stated the city was limited because it did not have a tree protection ordinance.

Mathews then reviewed credentials of the task force members which are in the packet. The city has relied on volunteerism due to small city staff and limited resources.

Mathews stated the goal of the ordinance is maintain the special character of the community by protecting trees. Trees increase property values, among others. Mathews discussed that Lake Minnetonka is impaired and should be protected from runoff. In the Comprehensive Plan, the city strives to protect the lake and value trees.

Rezabek described how trees soak up water. She stated that a 14 inch DBH deciduous tree or 100 ft tall coniferous tree each takes up 11,000 gallons of water in one growing season. She then discussed the importance of maintaining community character.

Mathews addressed comments from the previous meeting.

Determination of Heritage Tree - Significant trees are 6” at DBH (deciduous) and 8 ft tall (coniferous). Heritage trees are 30” DBH deciduous, and 30’ tall coniferous. The DNR designates a coniferous tree mature at 30 ft. Thirty feet is a good average as they grow differently.

Junk Trees - Petersen stated that there was a request to exclude cottonwood trees but they take up extensive amounts of water so they are considered Significant but not Heritage.

Minimum Tree Density Standard – the minimum density is one protected tree per 2,500 sq ft lot size. She stated most lots meet this density and the ordinance is written in a way that a property would not be required to come into compliance.

Dead Trees - Based on feedback, they updated the ordinance for no permit required for dead or noxious trees, or in the event of an emergency.

Fees - Instead of passing through fees from consultants the hope is the fee would absorb the consultant cost. Fees should be based on the time it takes to process the permit and proposed \$50 for no construction and \$200 when the review board or construction is involved. Fees may change after they evaluate the time required. Council will approve fees.

Hazard trees – Hazard trees that come down in an emergency, no permit is required but attestation after the event is required. If not an emergency, the tree would need to be inspected and a permit is required. City staff would be able to issue the permit.

Anderson discussed if a resident could remove a tree if it is not determined to be a hazard but they are concerned about it falling down. Commissioners discussed that if a tree is removed, there is a fee to pay and/or replacements and minimum density requirements. Mathews stated that a resident can remove any tree with a permit as long as they follow the process and all requirements are met.

Mathews then reviewed a chart in the packet comparing the proposed regulations with other cities’ tree preservation ordinances. She stated that Minnetonka Beach is unlike some lake communities that are small cabins converted to homes and are not all within 1000 ft of the lake so they looked at Woodland as comparable to Minnetonka Beach - with larger homes and also limited city staff. Excelsior and Woodland are most restrictive. Wayzata has three staff members dedicated to tree preservation and enforcement. She explained that the cities they focused on in the chart have similarities with Minnetonka Beach and are more restrictive. They looked for restrictive language but customized it to Minnetonka Beach, considered limited staff and tried to make it less complex, and considered ability for enforcement. All cities on the chart require the contractors to be licensed by the city and that they have insurance and some require they understand the rules.

The draft ordinance has a provision if someone is unable or unwilling to meet replacement requirements. The provision is to plant as many as they can and then pay a fee in lieu for the difference. Funds would go in a restricted fund dedicated to tree replacement in the city.

Mathews then discussed the Tree Preservation Review Board. It will not include a resident as previously proposed, and will be city forester, city administrator, and city engineer. City engineer would deal with runoff to the lake. Tree removals could impact nearby properties and the lake.

Mathews summarized that permits are required for removal of significant or heritage trees. Dead, noxious or not significant or heritage can be removed without a permit. Most properties meet minimum density. There have been comments that this permit process is not

necessary because people here protect trees but there are people who do not feel the same way and want to remove them. She stated there has been clear cutting in the city.

Halverson –stated that she called Wayzata and they stated a permit to remove is not required. Mathews stated the person she spoke with said they do require permits. Halverson also discussed that some cities only require permits with construction activity.

Mathews stated it may not matter what other cities are doing because what they are recommending is customized for Minnetonka Beach. Mathews stated that many larger cities have tree preservation ordinances that regulate construction because they have large developments. Minnetonka Beach is fully developed and established woods that it wants to keep.

Breazeale – recommended specific language changes for clarity.

- p. 86 –adding steep slope or bluff to definitions. Enlow recommended referring to its definition in Zoning Code.
- p. 86 – (E)(2)(a), (b)– replace “may” with “will be” issued by city staff.
- p.87 – (E)(3)(a) – add tree removal permits require approval of Review Board and “will be” issued if all conditions are met.
- p.88 - (E)(4) – may be approved add “or denied” as they may likely be denied
- p.88 - -(E)(6) – if construction activity is required, a tree preservation plan is required. Use “Construction Activity” rather than “Administrative Land Use Permit” for consistency and clarity.

- p. 90 – (F)(3) and (4) section title, add “guidelines for” deciduous/coniferous tree “replacement”.

Breazeale then suggested that the number of replacement trees be higher for significant trees. The task force made this less restrictive so it is less expensive for residents to replace trees.

Breazeale discussed the critical root zone and he did not think this seemed reasonable after they worked with the arborist on the amount of root that could be cut for excavation. Instead of defining it, he suggested it say “per the city arborist guidelines” because it will be related to construction and the arborist will be involved in reviewing the permit anyway.

Breazeale stated he is very supportive of this. The tree canopy is getting sparse which is not line with the comprehensive plan. Petersen stated it would be better to have the ordinance more robust now instead of trying to make it more restrictive later.

Swanson stated that trees add value. She thinks the collective property values are quite high and are a reflection of the character of the community and its proximity to the lake. She suggested they protect the resources as much as possible and not kill the goose laying the golden egg. This affects all of their property values.

Steinfeld did not have additional comments. He had called Mathews and had his questions answered. Supports it.

Anderson did not have additional comments and she supports the ordinance. She discussed concerns about adding additional fees.

Halverson wanted to be thoughtful of potential consequences and fees. She wanted the ordinance to be easy to follow and affordable so people are not unnecessarily burdened with additional costs. She added that not everyone in the city is a multi-millionaire and she wants to be respectful and considerate of those families that are not.

Steinfeld stated that new property owners are more likely to remove trees and more likely to be able to afford it. If someone had a hardship, they could ask council for a waiver of fees.

Blodgett did not have additional comments.

**(Steinfeld motion, Anderson second to approve the proposed tree preservation ordinance as amended from the last time with the additional comments made by Chair Breazeale; All ayes).**

Motion passed.

Chair Breazeale call a short recess at 9:28pm.

Blodgett left the meeting at 9:31pm

Meeting reconvened at 9:33pm

#### 6.2. DNR/ADU Code Update

Breazeale stated the city made commitments to the DNR and the chronology of events is in the packet. Swanson stated the city is within 1000 ft of the lake and classified as shoreland. She reviewed the history in the packet. In 1989 the DNR shoreland regulations were developed and all lake shore cities worked to bring their codes in line with them. In 1992, the city updated its code and submitted it to the DNR for their review. There were negotiations between the DNR and the city. The city asked for higher building height (25' to 40'), more hardcover (25% to 30%), and accessory structures. In return, the city promised seven restrictions – minimum 1 acre lots, minimum lot width of 150', Lakeside setback from the OHWL of 130-150', no boathouses, no guest houses (ADUs), no septic systems, and no density credit for PUDs. In 1996, the DNR approved the city code. In 2017, the city code was revised and the DNR did not review it and it is not in compliance with the DNR ordinance. The DNR does allow ADUs but in certain areas with certain lot sizes. There is currently a moratorium on ADUs to give the Planning Commission time to review the history of the code and DNR ordinance provisions related to them.

The task force is asking the commission to give the task force direction to prepare a draft ordinance. Breazeale thought the city council would want to give feedback before it goes to DNR for review. Enlow stated they wanted direction from Planning and then go to the DNR to see if they are interested in the concept they are proposing. They did not want to burden council with this until they know if the DNR is receptive. She added they would also need the city attorney and zoning administrator review. They are proposing ADUs allowed as part of the principal dwelling. The DNR may request other concessions if a proposal is less restrictive than the DNR shoreland rules. Enlow stated they will contact the DNR after getting direction tonight so they are aware a proposal is coming.

**(Anderson motion, Steinfeld second, to accept the recommendation as written and draft an ordinance in accordance with the five conditions listed in the task force recommendation; all ayes.).** Motion passed.

**The task force recommends the following in regard to ADUs:**

**Based on our review of the Comprehensive Plan (which encourages housing that allows aging in place), the DNR Model Ordinance, and the history of the MB ordinances from the original DNR-approved ordinance through the present, we recommend that ADUs only be permitted under the following conditions:**

- 1. An ADU must be contained entirely within the principal dwelling unit.**
- 2. The principal dwelling unit, including the ADU, must meet all MB setback, height and other residential development requirements.**
- 3. Occupancy of the ADU is limited to family members (as defined in MB current code, p. 214) and caregivers.**
- 4. No detached ADUs are allowed.**
- 5. Only one ADU (contained in the principal dwelling unit) is allowed.**

## **7. Reports**

- 7.1. Chair Report – Chair Breazeale asked DNR code compliance update be added to the next agenda.
- 7.2. Commissioner Reports
- 7.3. Council Liaison Enlow – Enlow stated a council seat opened with Steve Howarth moving out of the city. Council decided to not appoint someone and the seat will be on the ballot for the General Election in November. LMCD is working on a study regarding the impact of charter and wake boats on shoreline. The City of Orono gave notice that they will start their own fire department.
- 7.4. Building Permit Report – received and filed

## **8. ADJOURNMENT**

**(Halverson motion, Steinfeld second, to adjourn; all ayes.).** Motion passed.

Chair Breazeale adjourned the meeting at 9:58 p.m.

PUBLIC IN ATTENDANCE – The following individuals were in attendance: Tree Preservation Task Force – (Susan Enlow, Nell Mathews, Kim Petersen, Patty Rezabek), Joe Pagano, Carole and Jim Knudsen, Bill Raisbeck

Minutes respectfully submitted by City Administrator Heidi Honey

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Heidi Honey, City Administrator