

APPROVED  
Minnetonka Beach Planning Commission Meeting Minutes  
February 24, 2020

1. CALL TO ORDER

**Vice Chair Moriarty called the meeting to order at 7:00 p.m.**

2. ROLL CALL

Present: Vice Chair Moriarty, Commissioners Breazeale, Halverson, Howarth and Council Liaison Enlow. Absent Chair Haag, Commissioner Anderson and Naylor.

Staff in attendance: Phil Carlson, Zoning Administrator and Patrick Melvin, City Administrator.

3. APPROVAL OF AGENDA

**(Halverson motion, Howarth second to approve the agenda, all ayes).** Motion passed.

4. APPROVAL OF MINUTES – December 16, 2019

**(Halverson motion, Howarth second to approve the minutes of the regular Planning Commission meeting of December 16, 2019, all ayes).** Motion passed.

5. PUBLIC HEARING – Variance Request

5.1. Variance Request Lake Shore and Side Yard Setback – 1901 Lake Road (Kiesel)

Zoning Administrator Carlson provided some background on 1901 Lake Road. The owners, the Kiesel, are proposing to do interior remodeling with some minor exterior changes. The lot is a narrow lakeshore parcel on the corner of Lake Road and Northview Road. The property is approximately 60-70 feet wide at varying different points on the lot. The proposed plan calls for expansion of the existing deck and removal and replacement of the existing steps on the lakeside. The new steps and deck expansion as proposed require a variance from the AMLS (Average Minimum Lakeshore Setback) and a variance from the side setback requirements.

The AMLS is the setback already established by adjacent properties. In this case, 1901 Lake Road abuts Lake Road and therefore the AMLS is the same as that established for 2950 Northview Road, the adjacent home to the east. The property on the other side of Lake Road to the west does not have any impact. The AMLS for 2950 Northview Road is 136.1'. The establishment of the AMLS is part of the City Ordinance and prohibits residents from adding new structures beyond the AMLS with an approved variance.

Zoning Administrator Carlson referenced a map showing the grey area as existing house and the newly proposed deck in tan. The expanded deck will be at 124.6' which does not meet the 136.1' foot AMLS requirement for the Kiesel property. The increase is only .7 feet further into the AMLS from the existing deck but would require a variance of 11.5 feet into the AMLS setback.

The proposed bottom stair will be at 121.9' from the lakeshore. Stairs of 4' or less in width do not count as an encroachment into the AMLS, however the proposed stairs are 10-11' in width and

consequently must meet the AMLS requirement. Bottom of the existing steps were at 116.8 feet and if replaced, the bottom step will be at 121.9 feet from the lake, an improvement from prior by 5.1' but still encroaching into the AMLS and requiring a variance. The deck steps as proposed would require variances to allow them to be constructed 121.9' into the AMLS, an improvement from the existing steps at 116.8' but still an infringement into the AMLS requiring a variance of 14.2'.

The deck will also require a side set back variance of 1.3 feet to allow the deck to abut up to the side of the house. Proposed distance from side property line to deck is 7.9 feet and the required setback is 9.2 feet based on 15% of the lot width.

Administrator Carlson also discussed the sight line which is intended to protect lake views for adjacent properties. On the map the blue arrows highlight the sight line that is to be protected by the AMLS and the red line shows the actual sight line with the proposed deck and stairs extending beyond the AMLS as proposed. The proposed deck expansion and stairs encroach 3.4' and 2-3 degrees of arc into the established sight lines for the adjacent property at 2950 Northview as well as the property located to the east at 3004 Northview Road. Question was posed as to shouldn't sight line be from bay window on 2950 and Zoning Administrator agreed yes the sight line from that location would be at a sharper angle and greater loss of view.

The City's Comprehensive Plan provides guidance for protecting lake views, requirements for granting variances complying with ordinances and the comprehensive plan and a test for practical difficulties. Practical difficulties are defined in State law and in City ordinance and allow residents to use property in a reasonable manner not permitted by ordinance due to circumstances unique to the property and not created by landowner. The variance cannot significantly alter the essential character or locality.

Adding a deck is consistent with Minnetonka Beach Ordinance but encroachment of lake view is contrary. Steps and deck are considered a reasonable use. The questions Zoning Administrator Carlson asked are is the location and dimensions which cause the proposed expansion to violate the code reasonable? Does the property have unique circumstances that justify a variance? They have a deck, should they keep the existing deck? Expanding a deck to add use and enjoyment is valued in Minnetonka Beach he affirmed.

He further commented that this lot is unique in that it is narrow narrow and encroaches on side setback. Does this lot challenge create a practical difficulty? There is no way to add a 14 x 14 deck without violating the AMLS code. Is having the deck part of the house closer to the lake an acceptable expansion? Would this change the character of the area and is it reasonable? From an economic standpoint can the homeowner meet the code by spending more, the answer here is no. Is it a reasonable request and would the Council agree?

Phil recommends approval as he sees it as reasonable and it does not change character but ultimately it is up to the Council. It can be approved, approved with modifications, denied or the Commission can choose to continue discussion.

Public hearing opened at 7:20 P.M.

John Daily -Revision 153 East Lake Street in Wayzata

He stated that this house is older not sure about age but estimated it has parts dating back to 1920 or 1930. He had a few additions put on and found some unique things about the house. Overall, the house had a good footprint. From design they took into consideration maximizing the lakeside of the home. They spent some time discerning where is the front, side and rear. They wanted to create above grade gathering space.

If it were a foot or lower compared to existing ground the patio would not need to meet AMLS. The deck however is being raised 5 feet from existing ground level which consists of raising the ground by 2-3 feet for a total height increase of 5 between ground and height of deck. The existing ground was raised up from 946 to 948 and the height of the deck is three feet.

Nell Mathews- 2643 Arcola Lane. She lives on a 60 foot wide lot. Noise, activity and lights are her concern because she lives on narrow lot and looks into house windows etc. of her neighbor. Nell feels that the AMLS is being dismissed in this discussion. The Zoning calls for least 75 feet deep or average AMLS. The City wants to regulate itself by getting further from the lake not closer. Ms. Mathews cautions against relying solely on the sight lines but encourages consideration of noise, light and looking up into the second story windows. (She later provided a copy of the October 24, 2019 Memo from City Attorney Ron Batty regarding the Pinto and Zinn Land Use Applications which will be provided to Planning Commissioners)

Colleen Finnegan. The proposed deck is further back than the existing deck. Does that change the AMLS? That is a challenging question says Phil. The new deck is further away from lake so yes it would establish the AMLS further back from the lake. The question was asked if there was any consideration in determining the AMLS given to wide verses narrow lots to which Zoning Administrator Carlson responded no.

Close the public hearing at 7:33 pm

The question was raised as to what impact the stairway for the deck next door at 2950 Northview Road had on the AMLS for 1901 Lake Road. 2950 Northview has a large staircase coming down from the deck and should that be counted in a setback calculation? If the steps are counted in the AMLS for 2950 Northview Road the setback would be closer to the lake and allow the AMLS for 1901 Lake Road to be closer to the lake possibly changing the variance required.

There was some discussion about using the neighboring property across Lake Road , which some consider more of a driveway than a street. Zoning Administrator Carlson noted that it is City property and considered to be a street. The statement was made that the Commission should not approve something in front of AMLS but some were willing to hear arguments about not excluding the home neighboring homes on other side of Lake Road.

Zoning Administrator Carlson stated that if we had more information about the stairs on 2950 we would have a different AMLS line. 136.1 is the distance to the corner of the 2950 deck but does not include the deck stairs. It looks like 14 feet when considering steps with landing. Can we get clarification on steps and setback from the lake? Commissioner Breazeale commented that they should count the steps especially if they are raised up. With the Naeler decision steps were considered in the AMLS. If steps count perhaps the AMLS numbers will change where the Kiesel's won't need a front variance for deck but only need a side set back variance.

Zoning Administrator Carlson suggested the Planning Commission make a recommendation or postpone the meeting to get accurate calculations of the 2950 Northview Road AMLS. A new AMLS based on the location of the stairway may change the Kiesel request to only requiring a smaller deck. Zoning Administration Carlson would inform applicants that more time is needed and ask for an extension.

The Planning Commission would like to have accurate information to make a decision. If the Kiesel's can expand the deck and replace the stairs without needing a variance that is the best option and only possible with more information. After being informed of the new AMLS the Kiesel's can decide if they

can revise their plans to live within the AMLS and side setbacks or elect to come to the Planning Commission asking for the variances. Extension would be for 60 days before a decision is needed from Council. **(Breazeale motion, Howarth second to continue public hearing for variance request for more detailed information at next meeting pending correction and clarification on the AMLS as it relates to the adjacent lot and classification of steps as it relates to AMLS located at 2950 Northview Road, all ayes).** Motion passed.

## OLD BUSINESS

### 5.2. Northwood Avenue Vacation – referral from City Council

Susan Enlow provided an update on the Council discussion regarding vacating Northwood Avenue. During Northwood Avenue discussions with the Zinns (2416 LaFayette Road) and Pintos (2422 LaFayette Road) it was highlighted that the easement goes all the way through Huntington Point Road East and has some driveways connecting and utilizing the easement. In light of this, it made sense to ask would other residents want to use that road as well? More attention was given to other properties that would benefit and only two properties were thought to possibly benefit from using the current easement. Both properties are established so the thought was that they would most likely not use the easement. This led to further questioning of does the City need to do study or is the City fine and going forward the Council can address issues as they come up. The Council questioned what is the long-range view for Northwood Avenue and do we have to deal with it now? Planning Commissioners commented that the study would take time and now may not be the time to take on such a project.

Questions were asked including if there was a way to change the zoning for that piece of property and could the City take any other action than vacating? In response to the first question Zoning Administrator Carlson informed the Commission that property rights for accessing apply to platting of the property and not zoning and that he was not aware of any additional action the City could pursue. The easement is in place and the City has the option to vacate all or a portion thereof.

The Commission was informed that the moratorium is reliant on a study and that if the City chooses not to conduct a study the moratorium should end. The moratorium can be considered at the next Planning meeting, however it would not be responsible to defer a decision for a longer period of time if not doing a study. Planning Commission will make recommendation to Council. No additional work is needed from Phil at this time, just review the maps.

The right of way easement is in place and all abutting properties owners currently have the right to use but for most properties it is not practical. Multiple Planning Commission members recommended looking at partial vacations, perhaps just to Crescent and examining the maps. Vacating an easement requires following a legal procedure, notifying property owners and the Council making the decision. Zinn and Pinto own half of the existing row easement and city owns the other half. If City vacated the easement entirely it would go to adjacent property owners and half to the City placing the future use as a path at risk.

Joe Pagano- Parks Chair -3301 Old County Road- Mr. Pagano informed the Commission that he had three residents contact him about this issue. The residents that he heard from were all flashing the yellow light with concerns about vacating the easement space and losing control of a path to the park. Mr. Pagano wonders would that water drain into Arnolds or Half Moon Park? Environmental issues like these exist and he felt need to be explored further.

Mr. Pagano inquired if half of the Northwoods easement goes to City and the other half goes to the property owner, can the City continue to use their half as path? He felt that Northwoods Road south of Crescent Street could be vacated because of frontage on Huntington Point Road East. However, he

felt more difficult would be to vacate Northwoods north of Crescent Street where private property exists.

Nell Mathews 2643 Arcola Lane- Ms. Mathews referenced the City Attorney Ron Batty's opinion which was included in previous packet (a copy of which was later provided) Mr. Batty cited protection of vegetation in both the Zinns and Pinto case as reason for maintaining the right of way easement. Ms. Mathews stated that City does not have tree policy and therefore the abutting private property owners could cut down all the trees if it became their property. With that said should tree preservation be considered. If vacated and returned to private property residents would not be allowed to have a walking path.

Laura Inglis - 2120 Huntington Point Road East- Ms. Inglis agrees that as a resident she wants to preserve green space and park land and it's our responsibility. She felt that this should be added to the agenda to include looking at maps and reviewing the attorney's opinion from the October meeting.

Susan Enlow agreed to take these recommendations from the public to the Council to consider establishing and implementing a tree ordinance for trees in the right of way and throughout Minnetonka Beach. For example, Ms. Inglis knew that Maplewood had a tree ordinance and she felt it was beneficial to look at what other cities may have already done. Zoning Administrator Carlson concurred stating that many communities have tree ordinances, that don't restrict cutting but specifies that when trees are removed others have to be planted.

## 6. NEW BUSINESS

### 6.1. 2020 Planning Commission Meeting Dates

Several members voiced concern with the March meeting being scheduled the week of Spring Break and being unable to attend and have a quorum present. **(Halverson motion, Breazeale second to move the March meeting from Monday, March 23 to Monday, March 30, 2020, all ayes). Motion passed.**

There was some discussion about limited ability to attend the meetings in November 23 and December 28. The Commission had some discussion and decided to wait and see what the workload looked like for those months and to determine if a meeting was even warranted.

## 7. REPORTS

### 7.1. Chair Report

No Chair Report

### 7.2. Commissioner Reports

No Commission Reports

### 7.3. Council Liaison

The Council has been more receptive to addressing issues as they come up since the code was recently updated and not go looking for them. The Council expressed an interest in addressing issues on a case by case basis. They let no urgency with the code changes. Many of these smaller changes came through Phil and came up with corner lot development at 2201 Huntington Point Road East. Changes to 15% side setback and hardcover is not currently a request. Northwoods will be on next Planning agenda and does the Planning Commission want to deal with these that could be done without significant work. There are 8 or 9 items to be put on Planning Commission agenda for next time. The Council decided, with public input, that the water tower should be located at site 2 because less high quality trees will be removed. The Tanager bridge will be redone in 2020, the Narrows bridge closed in April and May. County Road 15/19 intersection will be redesigned. Stantec conducted a study

of Brooks Lane and the City will have to decide how to deal with private property being flooded. Two project options that address drainage issue will be considered for doing as part of water main project or rolling into the 2020 CIP.

7.4. Building Permit Report - Receive and File

## 8. ADJOURNMENT

**(Breazeale motion, Halverson second to adjourn the meeting at 8:28 p.m.) Motion passed.**

PUBLIC IN ATTENDANCE - The following individuals signed the sign-in sheet (or were in attendance):

Nell Mathews

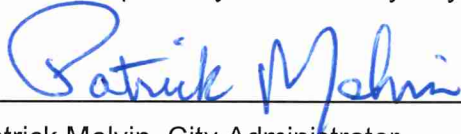
Joe Pagano

Steve and Laura Inglis

Patty Rezabek

Colleen Finnegan

Minutes respectfully submitted by City Administrator Patrick Melvin.



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Patrick Melvin, City Administrator