

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
September 25, 2017

1. Call to Order

Chair Orehek called the meeting to order at 7:01 pm.

2. Roll Call

Present: Chair Orehek. Commissioners Anderson, Breazeale, Haag, Halverson, Moriarty (arrived late), Steinke, and Council Liaison Bartel. **Absent:** None

Staff in attendance: City Administrator Susanne Griffin, Zoning Administrator Ben Gozola

3. Approve Agenda

Chair Orehek stated that they needed to add the oath of office for reappointed member Jeff Breazeale.

(Anderson Motion, Halverson second to approve the agenda as amended adding the Oath of Office for Jeff Breazeale after the Approval of Minutes; all ayes). Motion passed.

4. Approve Minutes: July 24, 2017

(Anderson motion, Haag second to approve the minutes of the regular Planning Commission meeting of July 24, 2017; all ayes). Motion passed.

5. Oath of Office for Commissioner Breazeale

City Administrator Griffin administered the oath of office for recently reappointed Commissioner Jeff Breazeale.

6. Elect Vice Chair

Chair Orehek asked members for nominations. Commissioner Anderson nominated Jim Haag for Vice Chair and he accepted the nomination.

(Anderson motion, Breazeale second to elect Commissioner Haag as Vice Chair; all ayes). Motion passed.

7. Public Hearing

7.1. Variance Request – Side Setback and Encroachment Plane variance - 1909 Beach Lane – Lehman residence

Commissioner Breazeale asked to recuse himself from voting on the variance as he lives next door to the applicant.

Zoning Administrator Gozola reviewed the variance request and report in the packet. The applicant is seeking to tear down the existing legal nonconforming home at 1909 Beach Lane and replace it with a new home in the same footprint with expansions requiring side yard setback and encroachment plane variances.

Gozola provided some history on the lot which included a 1984 lawsuit that the then owner and the City were engaged in. Before the conclusion of the lawsuit the parties entered into a settlement agreement that permitted the existing home to be built, and which is currently located 3.9 feet from the southeastern property line and encroaches 5'10" into the side yard encroachment plane.

Gozola reviewed the request which is for a 4"1' variance from the required 8 foot side yard setback and a 5'2" encroachment into the required side yard encroachment plane. The proposal lessens the existing encroachment.

Gozola reviewed the site identification map and aerial map. Gozola also mentioned that the current survey does not depict AMLS line in the proper location and the applicant's surveyor will correct that and the applicant understands that the home needs to be built behind that line, and that any approval would be contingent on the final footprint being conforming to the AMLS setback. There are no hardcover or floodplain issues. Gozola pointed out that pages 5 and 6 of the report review the proposal to the City's Comprehensive Plan guidance.

Gozola reviewed the drawings on page 7 which shows the constraints of the property, the existing structure and the proposed home, and page 8 showing the encroachment plane issues. The report discusses the applicable codes on page 9 and the applicant's narrative on pages 9 and 10 which include the practical difficulties and site characteristics of the lots which include two sewer easements on the property.

Gozola reviewed the variance review criteria included in the report and the applicant's response to that criteria:

1. Have stormwater runoff issues been addressed? Question for the Commission to consider is whether the proposed site improvements expand existing hardcover legal nonconformity?
2. Is the variance in harmony with the general purpose and intent of Chapter Two of the City Code of Ordinances? Will the proposed variance allow an improvement that does not uphold the city's zoning code?
3. Is the variance consistent with the Comprehensive Plan in that granting the variance will not alter the essential character of the locality? Will the proposed home look out of place?
4. Has the applicant established that practical difficulties exist on the site?
 - a. Does the applicant propose to use the property in a reasonable manner not permitted by the zoning ordinance?
 - b. Is the plight of the landowner due to circumstances unique to the property and not created by the landowner?
 - c. Economic considerations alone do not constitute practical difficulties?

Gozola pointed out that the applicant provided 12 letters of "no objections" signed by surrounding neighbors. One neighbor to the south signed the no objection letter but asked for a condition that any existing landscaping, decking, etc. that extend onto adjacent properties be corrected as part of the construction project. Gozola recommended that this be a condition of any approval.

Options for the Commission include recommending approval, denial or table and Gozola pointed out the 60-day review period would end on 10/27/17 but can be extended if necessary.

Chair Orehek pointed out that the zoning administrator has not provided a recommendation and he asked Commissioners how they felt about that. Commissioner Anderson feels it is important to hear what the zoning administrator thinks, especially if the Commission is struggling. She just wants to make sure the Commission ultimately makes the recommendation and not just accepts what the zoning administrator proposes.

Commissioner Haag agreed and he wants to know the zoning administrator's professional opinion.

Commissioner Halverson feels this approach is good in that Commissioners talk it out without just taking a recommendation from the zoning administrator. It encourages Commissioners to think independently and yet the zoning administrator is there to provide guidance when needed.

Commissioner Breazeale stated that he would expect the zoning administrator to interject if he/she felt they were making a mistake, but that not having his recommendations from the start requires the Commission to work through the criteria themselves and then get confirmation from the zoning administrator.

Chair Orehek opened the public hearing 7:17 p.m.

Public Comment:

Architects Lars Peterssen and Ted Martin stated they were available for questions. Martin said there is a nonconforming area near the lake that would be removed, he knows lake set backs are a big deal. There are two sewer easements on the property that make it a difficult property.

Nell Mathews - 2643 Arcola Lane – stated she couldn't tell from survey if there was any sidewalk or access on the side requiring the side setback side. Entrance will be on the sewer easement side per the architects. Mr. Peterssen stated there would not be a sidewalk other than maybe stepping stones and this is not the side where the entrance would be.

Mathews also asked about removal of the deck but asked about a patio that doesn't appear on the survey. Gozola explained that based on the current code, the patio can extend into the AMLS. Mathews also pointed out that the patio will also extend into the side setback.

Tracey Breazeale – 1915 Beach Lane – asked a question about a door shown to a mudroom, it's on the east side but now client wants to remove that to the other side. Entrance would be through the deck or the other side of the house.

Jeff Breazeale – 1915 Beach Lane made comments as a resident – he noted where the report said that the neighbors aren't affected because of plant screening – they do benefit from the buffer on the property line now, he wants the understanding that they can replant a buffer on property line if and when the plants die from construction or otherwise. They were concerned about the walkway on that side. Breazeale stated that he wants to replant the buffer with plants of their choosing and 2) clear up anything that is currently on or over the property line. He also asked about stormwater and Gozola confirmed that this would be reviewed by the city engineer.

Mr. Peterssen stated that they didn't believe their client would disagree with what Mr. Breazeale is suggesting and they would be willing to work with the neighbor to come to some agreement.

Mr. Breazeale requested that the planting of the buffer on the property line be a condition of the variance. Tracey Breazeale agreed that this should be written as a condition.

Resident Mathews asked why the drawings don't appear to show the patio. She went on to describe her own experience with the city allowing a patio to be built right next to property line next to her and with their new furniture it does block her view. She explained that while you can put screening on the lot lines, that is only helpful for the main floor and not upper floors.

She also said it would be more helpful to have entire plan shown in the packet. On the encroachment issue, she understands the easement issue, but the property has been able to be used in a reasonable manner up to this point. She stated that the city wants to eliminate nonconformities, not continue them. She stated she wanted everyone to know that she believes it is contrary to code and state statute relating to nonconformities. She is concerned about where the city is going with these nonconformities. She stated that her own personal experience with a similar situation it has been a nightmare. She stated that with this proposal of the patio being built so close to the neighbors she wanted them to understand how it will impact them.

Resident Tracey Breazeale stated she didn't recall the patio setback being discussed, and she didn't know the patio was going to be within 3 feet from the lot line. Administrator Gozola stated that the report did show hardcover as it relates to the deck and patio, but that the current code allows patios to be built up to the side lot lines.

Mr. Peterssen spoke about Ms. Mathews concerns about the documents in the packet not clearly showing what was being proposed, and he stated that they wanted to show things simply and just what is relevant to the variance.

Mathews said she understood that, but from a visual standpoint and understanding what the impact is going to be, it would be helpful to the Commission and the neighbors to show the whole picture when requesting variances. She also stated that the patio issue is the subject of a lawsuit. She pointed out that the neighbors didn't know about the patio until the discussion at the meeting and that is concerning to her.

Chair Orehek closed the public hearing at 7:40 p.m.

He thanked everyone for their comments and asked members if they had any questions for the zoning administrator or the architects.

Breazeale stated he agreed that the renderings don't clearly show what is being proposed however, what is being proposed is better than what is currently there which is actually over the property line at one point. Mr. Peterssen stated that anything over the property line should and will be removed.

Commissioner Breazeale commented that there are nonconformities that are being improved such as removing the deck. The patio is better. He understands Ms. Mathews' concerns. This lot is very difficult with it being so narrow and with the sewer easements.

Commissioner Moriarty asked for clarification on the garage. Halverson asked if house would be closer to the street and this was confirmed. The architects stated they did move the house closer to the street to avoid any lake setback variances.

Commissioner Haag asked about the sewer easements and where the house is being constructed up to the easement.

(Anderson motion, Haag second to recommend approval of the requested side yard setback variance and encroachment plane variance based on the following findings of fact and subject to the recommended conditions in the staff report in addition to the conditions added by the Planning Commission as follows:

Findings of Fact:

1. the lot is unique and difficult due to the size
2. has two sewer easements
3. the proposal fits in with smaller houses there today
4. there is an existing settlement agreement that allows the home to be built where it is
5. the home will be conforming to all lakeshore setbacks
6. the proposal eliminates hardcover nonconformities
7. and any other findings as determined.

Recommended Conditions:

1. The final house footprint shall be amended to become conforming to the required AMLS setback requirement before a building permit application will be accepted.
2. All existing landscaping, decking, garden borders, etc, that currently extend onto the adjacent properties shall be corrected as part of the home construction project.
3. The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
4. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
5. The applicant will be required to obtain a Minnehaha Creek Watershed District permit for erosion control. A copy of the permit shall be submitted to the City after MCWD approval.
6. The City Engineer shall have the option to inspect the property at the applicant's expense during the construction process to ensure on-going compliance with all engineering requirements.
7. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.
8. All existing decking, garden borders, etc., that extend onto the adjacent properties shall be removed/corrected as part of the home construction project.

9. The landowner shall allow replanting of a vegetative buffer directly atop the shared eastern side lot line.

Ayes: Anderson, Haag, Halverson, Orehek, and Moriarty. Abstain: Breazeale).

Discussion: Gozola was asked for his recommendation. He stated that he understood that the Commission feels that this is a difficult lot and would add to the findings of fact that there is a settlement agreement that allows the current home to be built where it is today.

Commissioner Haag said he talked to original owner who built the current home, Bruce Kullburg, who stated that the house must be built in the same footprint due to an earlier settlement agreement.

Commissioner Moriarty asked about stormwater drainage and it was clarified that the details of this have not been completely worked out, but the architects understood the requirements. Commissioner Halverson asked about the use of a green roof, and the architects responded that their client was not opposed to the idea and they explained how the drainage can be managed with a green roof.

8. Old Business

8.1. Zoning Code Amendment summary comments received from resident

The City received a list of concerns from a resident on the proposed zoning code and Mayor Taylor has requested that the Commission review the comments and determine whether any changes should be made to the proposed zoning code based on the comments.

Chair Orehek stated that the Commission has already submitted their recommendations to the City Council on the proposed code.

Commissioners reviewed the comments and discussed the issue raised about the role of the Planning Commission and the zoning administrator. Commissioner Halverson reviewed her notes from a previous meeting where the Commission discussed these roles. Changes were made at that time so that the zoning administrator had an advisory vs recommendation role in some cases.

They discussed what changes they made to the role of the Zoning Administrator as it relates to the appeal process.

Chair Orehek asked Ms. Mathews if she wanted to speak on the concerns. She stated that she wanted to bring up the issue of side setbacks and patios.

Ms. Mathews stated that the Planning Commission did not address the issue of the zoning administrator making recommendations on administrative appeals. She stated that the Planning Commission should have a role in administrative appeals before they go to the City Council as they are the City's planning agency.

Commissioner Breazeale stated that in retrospect he does think that it may be inappropriate to allow patios up to the side lot line and stated a patio should require the same setbacks as the primary structure. He stated concerns about patios being allowed up to the 75-foot lake setback.

Commissioner Anderson said that if any Planning Commissioner has issues with the proposed code, they should write a letter to the City Council and attend the October City Council meeting.

Mathews also pointed out some inconsistencies in the proposed code relating to patios such as section 207(4) of the current code which states that all uses must meet setbacks. It should be clear and consistent in the new code if it is not in the proposed code.

Commissioner Breazeale asked Ms. Mathews about her concerns regarding patios and she clarified that the side setback should be based on the size of the lot and the structure, not necessarily 8 feet. As it relates to the lake setback, variances should be required for anything in the lake setback. Mathews understands property rights, but the issue is when it encroaches on the neighbors.

Chair Orehek ask Commissioners for any other comments.

Commissioner Breazeale brought up the issue of rip rap and he understands that it is important they don't compromise the lakeshore. Halverson pointed out that there are places where mulch and even gravel are appropriate if there are erosion issues.

Breazeale brought up the issue of the zoning administrator being able to impact an administrative appeal. Members reviewed their earlier discussion and ultimately decided that the zoning administrator would have an advisory role or a recommendation as it relates to administrative appeals, but not making a final decision.

Commissioner Breazeale stated he would write a letter to the City Council regarding patios and setbacks. Council Liaison Bartel reminded Commissioners to read the final version and come to the City Council meeting.

Ms. Mathews asked about the definition of "Yard" and stated that the proposed definition is inconsistent with the comprehensive plan and the current code. Commissioner Breazeale agreed to look into this as well.

8.2. Transportation Projects

8.2.1 – Speed Bumps – Chair Orehek provided an update – the study that was recommended to City Council was denied. Council Liaison Bartel stated that the issue was actually tabled because they wanted more information and assistance from other lake area cities and if other cities had anyone on staff that could help. Commissioner Anderson stated her recollection of the meeting was that there was not enough information.

It was also noted that the Orono Police Department conducted a speed study that was done on Lafayette Road and the results were included in the packet.

Commissioner Haag asked about how speed bumps were installed on Northview Road in the past. Commissioner Anderson stated that there was a petition to the City Council at that time. She said once Council approved it, the Public Works director and another council member decided what and where to install the speed bumps.

Commissioners discussed the findings from the transportation study that was done in the past and why the speed bumps were being requested. Chair Orehek also suggested they get other bids for a speed bump study.

8.2.2 Safe Crossing Update

Commissioner Halverson updated members on the last meeting of the safe crossing subcommittee. The County representatives provided information on the use of a median for a safe crossing. She stated that the county also provided some different options that would alter how traffic enters Arcola Lane. They also discussed the dirt path along and near Lafayette Park. Halverson stated that she attended the last Park Commission meeting to discuss the topic and Park Commissioners were concerned about the path and especially how wet this area is.

Commissioners discussed getting bids for the dirt path and Administrator Griffin advised that she passed along Chair Orehek's request for Ben Young to assist with getting bids and she contacted Three Rivers Park for contacts for potential vendors for the dirt/gravel path. Halverson stated Parks thought the city engineer should be involved also because of the drainage issues. Halverson also stated that the county may also fund some of the pathway with grants.

8.2.3 Issue of parking on Lafayette Road

Chair Orehek stated that the issue of parking on Lafayette Road at Huntington Point Road West came up during the recent transportation study and complaints were received this summer on vehicles parked on Lafayette Road by the Moriarty residence. One complainant felt that it was unsafe to allow parking there due to limited site lines for traffic traveling west on Lafayette Road.

Commissioner Moriarty explained the issue from his perspective and has sent photos to the City of vehicles parked on the yard, damage done to the grass, and leaving trash etc. It was suggested during the transportation study that Lafayette Road from Huntington Point to at least Woodbridge be changed to Permit Parking Only, and if that didn't resolve the problem that this section be No Parking.

Commissioners discussed how they are addressing the data from the recent transportation study. Chair Orehek stated that the crossing was the predominate issue and they are working on that. The next issue was speed bumps (traffic calming).

The Planning Commission will take the parking issue under advisement for now, but all agreed that more information is needed on where to restrict the parking and even potentially contact other small cities to see how they address parking issues.

Resident Mathews asked about what the legal City right of way is (whether it's 10 feet from the pavement) and whether the City can restrict parking in the right of way.

9. Reports

- 9.1. Chairperson –
- 9.2. Commissioner Reports-none
- 9.3. Council Liaison Bartel –.reviewed council actions which included the Park Commission's tree planting plan; removal of pine tree at the welcome sign; the Finance Committee is working on the 2018 budget and water project bonding; they discussed eliminating the post office; the Truth in Taxation meeting was set for December 4th, 2017; they set the preliminary budget and tax levy, the fee schedule adopted; new Public Work Director attended the meeting and had ideas for improvements; Treasurer Howarth suggested that Bartel and Howarth meet about the Public Works budget; Administrator Griffin and Bartel attended an informative comprehensive plan seminar and they are meeting with Mayor Taylor on this issue
- 9.4. Planning and Zoning Administrator – no report
- 9.5. Building Permit Report – Received and filed

10. ADJOURNMENT

(Haag motion, Halverson second to adjourn; all ayes). Motion passed. Meeting adjourned at 9:15 p.m.

PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet: Ted Martin, Lars Peterssen, Nell Mathews, Tracey Breazeale

Minutes respectfully submitted by City Administrator Susanne Griffin.

Susanne Griffin, City Administrator