

**CITY OF WOODLAND
COUNCIL MEETING
June 10, 2013**

CALL TO ORDER & PLEDGE OF ALLEGIANCE

Mayor Doak called the meeting to order at 7:00 P.M.

ROLL CALL

Present: Mayor James Doak; Council Members Sliv Carlson, Chris Rich, Tom Newberry and John Massie

Staff: Zoning Administrator Gus Karpas and City Clerk Shelley Souers

Guests: Steve and Zuzana Arundel, Charlie Bisanz, Greg Brown, Craig Twinem
David and Kathleen Daniels

CONSENT AGENDA

A. Minutes, May 13, 2013; Regular Council Meeting

Council Member Rich moved to approve the consent agenda. Council Member Massie seconded the motion. Motion carried 5-0.

PUBLIC COMMENTS

None.

PUBLIC HEARING

A. Variance; 2830 Maplewood Road, Steve Arundel, request a variance to alter the grade greater than three feet to permit a walkout /lookout level on the new home.

Mayor Doak opened the public hearing to consider the request for a variance by Steve and Zuzana Arundel, 2830 Maplewood Road. Mayor Doak spelled out the format of the hearing process.

Mayor Doak asked that the Zoning Administrator Gus Karpas provide a summary of the background on the events that have transpired to this point and outline the variance request.

Zoning Administrator Karpas summarized the history of the project, noting that the applicants applied for a permit to construct the foundation. Mr. Arundel contacted the City and inquired about making an alteration to the foundation. Zoning Administrator Karpas agreed that a modest alteration in the foundation should not be an issue. Review of the as-built foundation survey indicated that the foundation had been altered and relocated on the property. In relocating the foundation the grade was altered and exceeded the allowable grade alteration. Karpas stated that the Arundels were required to submit a new permit and plan for review by the building inspector. The foundation complied with all required setbacks but necessitated the alteration of the grade greater than three feet in violation of section 900.17(4)(a) of the city code. The Arundels were instructed that they would need to comply with the ordinance or apply for a variance. Mr.

Arundel met with the City Engineer Robert Bean and was informed on how to bring the grade back in to compliance. Mr. Arundel continued with the building project with the understanding that they would restore the grade to meet the ordinance. The Arundels have since decided to seek a variance for the grade alteration as an alternative to restoring the grade.

Zoning Administrator Karpas summarized the request for a variance to exceed the maximum permitted grade alteration of three feet. The total grade alteration is six feet, requiring a variance of three feet. The placement of the foundation was reviewed by the City Engineer and staff and was in compliance. The location of the foundation complies with all zoning restrictions except an area along the backside of the foundation which was altered greater than three feet. Karpas stated that he has reviewed the variance criteria and recommends denial of the requested variance based on the following findings of fact.

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

The proposal, though it maintains the residential character of the City, does not respect the intent of the city, through its ordinances, to have new homes conform to the existing topography of properties and the belief that new structures should be constructed within the confines of the existing topography whenever feasible. Unnecessary alteration of topography negatively impacts the health, safety and public welfare of the City. The proposed variance request is twice the allowed grade alteration permitted under the ordinance and is not necessary since the city engineer and applicant previously identified a feasible alternative to the significant grade alteration,

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

The request is consistent with the Comprehensive Plan in that it maintains the residential single family use of the community, but it proposes a variance that is two times the grade alteration allowed by the ordinance.

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

Given the topography of the site and the desire to avoid damage or destruction of an existing tree, some grade alteration could be viewed as reasonable, but a six foot deviation is excessive, even if covered to some extent by deck and landscaping. Further, the tree's existence was obviously previously known to the applicant, the original plan was unilaterally deviated from by the applicant rather than by timely filing an application for a variance, the stop work order was lifted only upon reaching a feasible alternative between the city engineer and the applicant that avoids the need for a variance, and the alternative is still feasible,

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

The plight of the homeowner was created by the homeowner. The applicant submitted a building permit for his initial foundation which was in compliance with the city ordinance. A subsequent survey indicated the foundation had been relocated on the lot. Had the homeowner submitted the plan for the alternate location for his foundation prior

to construction, he would have been informed of the grading issue and permitted to bring his foundation into compliance with the ordinance or given the opportunity to apply for a variance. Once built, the applicant was informed that he would either have to bring the property into compliance with the ordinance or apply for a variance prior to continuing construction on the site. The applicant developed a plan in conjunction with the City Engineer to remedy the violation and commenced construction of the structure. The applicant recently changed his mind and is now seeking a variance.

The argument that requiring compliance with the ordinance interferes with the proposed landscaping does not meet the practical difficulty standard since landscaping can be altered and in theory has already been altered since the shape and location of the original foundation has been changed.

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

The proposed location of the grade alteration is reasonable in terms of its visibility to adjacent properties, but the degree of alteration is unnatural and inconsistent with the provisions of the city code.

Mr. Arundel stated that the grade has been temporarily altered along an area approximately 3x10 feet on the back side of the foundation. They are seeking a variance to leave the grade as it presently exists.

Mr. Arundel summarized their construction process that has brought them to this point. The property was purchased in 2012. A foundation permit was applied for in the winter to get ahead of the road restrictions. When the foundation permit was obtained, Mr. Arundel stated that he told the City the house plans were close to completion but not fully finalized. The survey crew informed them that the planned location of the house would jeopardize a large oak tree. Mr. Arundel stated that they made several changes to the plan by moving the foundation approximately 6-8 feet west, lowering the height of the house 20 inches and extending the garage one foot. Mr. Arundel stated that he made the judgment that the changes were insignificant and did not present the changes to the City Planner. When the house plans were submitted for a permit, Zoning Administrator Karpas stated that due to the changes new plans and a survey would be required. The as-built foundation survey was submitted. The City Engineer reviewed the plans and noted that the grade had been lowered by six feet, three feet lower than allowed by ordinance. Zoning Administrator Karpas informed Mr. Arundel that he would need to correct the grade or seek a variance. Mr. Arundel stated that they chose to seek a variance to allow the grade to remain at the current level, three feet below the allowable level.

Mr. Arundel stated that the proposal maintains the character of City and would have no impact on the welfare of the City and no impact on the surrounding property. The grade alteration is located under a planned deck and screened by landscape.

Council Member Rich asked how the matter would be remedied if the variance is denied.

Mr. Arundel stated that they will build a retaining wall, approximately 3 x 8 feet, and back fill the area with dirt to the house.

Zoning Coordinator Karpas stated that the City Engineer confirmed that the solution would be construction of a retaining wall and back fill with dirt.

Council Member Carlson asked if the relocation of the foundation required the septic system to be relocated.

Mr. Arundel said the location of the septic system did not change.

Council reviewed the criteria for variance approval.

Mayor Doak noted that there is case law that pertains to after the fact variance, referred to as Stads vold factors that supplement practical difficulty. The Stads vold factors are: (1) how substantial the variation is in relation to the requirement; (2) the effect the variance would have on government services; (3) whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties; (4) whether the practical difficulty can be alleviated by a feasible method other than the variance; (5) how the practical difficulty occurred, including whether the landowner created the need for the variance; and (6) whether, in light of all of the above factors, allowing the variance will serve the interests of justice.

Mayor Doak noted that the Stads vold factors add other elements that amplify but do not change the criteria of the variance, but rather considers the substantiality of the deviation from the ordinance.

Mayor Doak noted that multiple factors were considered when the grade alteration ordinance was adopted. One concern with extensive grade alterations was that the City's heritage would be obscured by buildings. The rolling topography was seen as a positive characteristic of the City and Council agreed that homes should be designed to fit the lots.

Council Member Rich stated that the plan is in harmony with the area. Council Member Rich stated that the chronology of the application is an issue, but more so than the number of feet the grade is out of compliance. Rich noted that installing a retaining wall in the corner of the back of the house does not seem to accomplish much. The topography drops sharply into Lake Marion and creating a small yard area for kids and a gradual slop will allow percolation of water in to the wetland. A steep slope will accelerate runoff into the lake. The plan is in harmony with the purpose and intent of the ordinance.

Council Member Carlson expressed concerned that contractors must understand the process and guidelines. Carlson agreed that there is little benefit to installing a retaining wall under the deck to replace the grade.

Mayor Doak noted that the City requires as-built surveys throughout the building process to protect residents and the City.

Council continued review of the variance criteria.

- a) The variance is in harmony with the purpose and intent of the ordinance.
- b) The variance is consistent with the comprehensive plan.
- c) The proposal puts the property to use in a reasonable manner
- d) There are unique circumstances to the property not created by the owner
- e) The variance, if granted will not alter the character of the community.

Council Member Massie stated that he has no issue with the variance request, but stressed that changes made to building plans must be conveyed to the City to avoid after the fact variance requests.

Mayor Doak agreed that the idea of a retaining is a technical fix and seems punitive in nature.

Council Member Newberry stated that the City has authority to grant a variance if all criteria have been met. Newberry did not believe the difficulty was caused by the applicant. The request is identical to a situation where a homeowner would propose a change in grade.

There being no further comments, Mayor Doak closed the hearing.

Mayor Doak stated that Council is in general agreement for the variance. The findings have been prepared with the City Attorney's help. Mayor Doak asked that the Council consider motion #1 to allow staff to work with the City Attorney on the language.

Council Member Carlson moved to extend the time period for review of the variance application by Steve Arundel for a variance allowing a three foot grade alteration at 2830 Maplewood Road permitted by M.S. Statute 15.99 and direct staff to so notify the applicant, and further to prepare findings of fact for approval consistent with that action for consideration by the City Council at its next meeting. Council Member Newberry seconded the motion.

Mayor Doak moved to amend the motion to include the findings to incorporate the discussion of the City Council. Council agreed. Motion carried 5-0.

Mayor Doak stated that the approach taken by the Arundels to adjust the building plans is not the way the City operates. Mayor Doak cautioned that his approach could be very damaging to owners.

NEW BUSINESS

A. LMCIT Municipal Liability Insurance Renewal.

Council reviewed the municipal insurance coverage and renewal quote for liability insurance effective through May 2014.

Mayor Doak noted that the indemnity language in the Joint Power Agreement with Deephaven has been corrected and that Deephaven will assume liability for police services.

Council Member Massie moved and Council Member Carlson seconded the motion to approve the LMCIT municipal liability insurance coverage. Motion carried 5-0.

B. Street repair and patching

Council Member Rich and City Engineer Dave Martini identified multiple areas along the City streets that require patching. The repairs were divided into primary and secondary locations. Council reviewed four quotes and agreed that due to the upcoming improvements planned for County Road 101 that the areas identified along Breezy Point Road (E & D) be eliminated from the list of locations designated repairs.

Council Member Carlson moved to approve the asphalt repairs with JBT Black Topping and that the City Engineer request JBT to rebid the cost removing two locations, E and D and further that the repairs not to exceed a maximum cost of \$33,000. Council Member Massie seconded the motion. Motion carried 5-0.

C. Contract for service with Deephaven

Council reviewed the 2014 contract for police, clerical, building inspection, public works and zoning services with the City of Deephaven.

Council Member Massie moved to adopt Resolution No. 16-2013; approving the 2014 contract for services with the City of Deephaven. Council Member Rich seconded the motion. Motion carried 5-0.

D. Stormwater – MS4 permit updates

Council reviewed a letter from the City Engineer regarding the MS4 Permit. The City Engineer will develop a list of items that must be included in the new permit application submittal and updates required for the City's Storm Water Pollution Prevention Plan (SWPPP). The principal change is associated with the runoff volume reduction requirements. MS4 communities will be expected to develop, implement and enforce controls for no net increase in stormwater discharge volume on an annual average basis. This is anticipated to be met by ensuring that new developments include an infiltration component in their Best Management Practices.

OLD BUSINESS

A. County Road 101 sidewalk discussion

Mayor Doak introduced Hennepin County Design Division Manager Craig Twinem and URS Engineer Greg Brown to speak about the County Road 101 improvements and sidewalk updates. Mayor Doak noted that the City's road maintenance budget is small. The City will need to set aside a significant amount of the budget to connect Breezy Point Road with the planned roundabout at County Road 101.

Greg Brown distributed a layout map of County Road 101 depicting the sidewalk. The County provided an updated cost estimate for the improvements, including the sidewalk. Curb and

gutter is proposed along the route. The improvements will also include catch basins to slow drainage and filter the stormwater runoff.

Mr. Charlie Bisanz, 17759 Maple Hill Road, reported that the current drainage situation includes a 31 inch drain that allows untreated water into Shavers Lake. The County has discussed installing a hydro dynamic separator to treat the water run off into Shavers Lake. The City of Minnetonka would be responsible for all maintenance of the treatment separator.

Council Member Carlson asked if redirecting water into the wetlands could cause damage to road beds.

Mr. Twinem stated that the storm water would be directed underground into catch basin which should lessen the impact to the streets.

Mr. Twinem stated that the County is negotiating with State Aid as to the eligibility of turn-back funds for certain costs, including storm sewers in an effort to further lower the costs. The County estimates \$20,000 for Woodland's participation to be conservatively high. The improvements along Woodland include approximately 1,000 lineal feet of sidewalk, six feet wide adjacent to the curb. The County's cost share for a new sidewalk is typically 20%. The County is proposing to increase their participation above their cost policy to 50% due to the connectivity the sidewalk provides to the multi-use trail.

Mayor Doak summarized past discussion on the County Road improvements. The City received comments from residents in support of and opposed to the sidewalk. Residents are concerned with maintenance and further reduction of their property.

Council Member Massie asked which entity will maintain the multi-use trail

Mr. Twinem stated that the County will not maintain the sidewalk or the trail. The City of Minnetonka will maintain the sidewalk and trail within their jurisdiction.

Mayor Doak stated that a positive aspect of the sidewalk is that it would integrate Maple Hill Road and Blaine Avenue with the rest of Woodland.

Mr. Twinem stated that the proposed sidewalk will be within the County Road 101 right-of-way. If grading is needed along private property, easements will be sought by the County. MNDOT will restore all driveway aprons and curb cuts.

Council Member Carlson stated that she is not convinced that the sidewalk will increase pedestrian traffic.

Mr. Twinem stated that the speed in the traffic circle will be 20 MPH, which creates safer location for crossing.

Council Member Carlson asked if the County considered a pedestrian traffic signal at the Maple Hill Road intersection.

Mr. Twinem stated that the location of the Maple Hill Road intersection would not warrant a traffic signal to stop traffic.

Council Member Newberry asked if the City would consider clearing snow from the sidewalk to remove the burden from the adjacent owners. Newberry felt that the City should commit to making necessary repairs to the sidewalk, if installed.

Mayor Doak stated that the County has provided a reasonable cost estimate and the City is more comfortable with the anticipated improvement and sidewalk costs. Mayor Doak reported The Council will continue discussion with the residents abutting County Rd 101 at the July Council meeting.

Mr. Bisanz stated that crossing County Road 101 with pets or children is currently very dangerous. Mr. Bisanz stated that in order to walk down County Road 101, pedestrians must walk across the edge of private property to be safe and avoid traffic.

In answer to Council Member Newberry's question, Mr. Brown stated that County Road 101 must be designed for truck traffic. Semi trailers will be permitted to travel along the roadway.

Council Member Rich asked why the sidewalk would not continue into Wayzata.

Mr. Brown stated that access and density issues were a factor.

Culvert repair and replacement

The City Engineer is working with the Minnehaha Creek Watershed District to complete the permit requirements to begin replacement of the culvert.

MAYORS REPORT

Mayor Doak reported that the City will consider an ordinance regulating backyard chickens and has enlisted the help of residents to draft language for Council review.

Wayzata Mayor Ken Wilcox has written area mayors to solicit participation in a Lake Minnetonka Regional Scenic Byway initiative. The purpose of the regional scenic byway system is to tie together all the historic, scenic and cultural amenities of the Lake Minnetonka communities to create a marketing and branding opportunity for the area. Mayor Doak stated that he will speak with Mayor Wilcox.

The Maplewood's Association is considering installing cameras on the entrance pillars in to Maplewood. Mayor Doak stated that the City will contact the City Attorney regarding the implication of security cameras along a public roadway.

COUNCIL REPORTS

A. Ordinances & Septic Ordinance & Inspections

No report

B. Roads, Signs, Trees, & Website

No report

C. Finance, Enterprise Funds, Intgov. Relations & MCWD

Council Member Carlson reported that the water fund has some improvements. Ground water is still a main issue at the capital. The Cattail Bill passed allowing residents to remove shoreline cattails with a permit from the DNR. Governor Dayton signed the Organic Solid Waste Bill. Cities can also now limit the number of refuse haulers permitted to operate in their City.

D. Public Safety & Deer Management

No report.

ACCOUNTS PAYABLE

Council Member Carlson moved to approve the accounts payable as presented. Council Member Newberry seconded the motion. Motion carried 5-0.

TREASURER'S REPORT

Council Member Massie moved to approve the accounts payable as presented. Council Member Rich seconded the motion. Motion carried 5-0.

ADJOURNMENT

Council adjourned by consent at 9:40 P.M.

ATTEST:

Shelley J. Souers, City Clerk

James S. Doak, Mayor