

**1. CALL TO ORDER/ROLL CALL**

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Lucking and Commission members John Beal, David Paeper, Mark Spiers and Alternate members Bill Cook and Brian Malo

Absent: Commissioner Palmberg

Others Present: City Attorney Mark Kelly, Council Liaison Tom Fletcher and Zoning Coordinator Gus Karpas.

Due to the absence of Commissioner Palmberg, Alternate member Malo was a voting member.

**2. APPROVE AGENDA**

Commissioner Beal moved to accept the agenda for tonight's meeting. Commissioner Paeper seconded the motion. Motion carried 5-0.

**3. MINUTES OF September 15, 2010.**

Commissioner Spiers moved to approve the minutes of September 15, 2010. Commissioner Beal seconded the motion. Motion carried 5-0.

**4. LIAISON REPORT**

Council Liaison Fletcher thanked Commissioner Beal on behalf of the Council for his service on the Buckthorn Committee. He said the Council approved the second reading of the new ordinance which is now in effect. Fletcher said the Conditional Use request for Sonus was continued since there were changes made to the plan, but no new plans were presented to the Council. The Council also extended the variance deadline for Robert Schmitt. The last item of interest for the Commission was that the city will pursue Milfoil control in St. Alban's Bay next year.

**5. NEW BUSINESS**

Discuss Potential Ordinance Changes in Response to Recent Minnesota Supreme Court Decision on Variances and the Expansion of Nonconforming Structures

Council Liaison Fletcher said the ordinance was drafted by the Mayor to try and establish acceptable minimums for small lots in the city. He said the sense of the Council was that the Supreme Court decision was not a big deal in Greenwood since it has typically followed the state criteria in reviewing variances. He said Councilmember Page wanted to hold off on doing anything until after the next legislative session to see if any changes are made in response to the decision.

Commission Beal said he was not in a hurry to change things and said he has no knowledge of any upcoming variances that would require an immediate change. He said

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a lot of cities are concerned about what to do in response to the decision, so we can easily follow their lead.

City Attorney Kelly said he attended a seminar that discussed the decision. He said the Minnetonka City Attorney discussed the expansion of non-conformities, which have historically been done by using the variance criteria, and in this case instigated the lawsuit. They are now looking at drafting an ordinance to permit the expansion of non-conforming structures outside the variance standards. Mr. Kelly said the City of Greenwood could make it a policy that the expansion of a non-conforming structure could be permitted insofar that other code's minimum standards are being met and no more. He said the intent of the proposed ordinance language in front of the Commission was to try and define what a reasonable use is.

Chairman Lucking suggested the code could be amended by referencing the Supreme Court decision, but adding a statement that expansion would be allowed only to comply with existing building and fire codes.

City Attorney Kelly said one of the most problematic issues, and the one that lead to the lawsuit, is converting a flat roofed structure into a peaked roof structure.

Commissioner Beal suggested a change could also be made to the ordinance which states that on a lot with three road frontages, that only two front yard setbacks would be required.

Commissioner Cook discussed his experience when applying for variances on his property. He feels the ordinance is over complicated and asked if there was any interest in making it simpler to allow people to understand what is needed to be approved on variance requests. He said his experience was that there was confusion on the part of the city on the permissibility of what could be approved. He said this caused him undue stress. He feels boundaries need to be created that applicants can work within.

Chairman Lucking noted that at the time of Mr. Cook's variance request, the state had yet to pass legislation, which is now in effect, protecting existing non-conforming footprints. But he also noted that the Mr. Cook's request also expanded the non-conformity.

Commissioner Beal said he understood what Commissioner Cook was saying, but thinks the problem isn't with the ordinance itself, which clearly defines the dimensional requirements and outlines the hardship criteria. He believes what applicants want to know are what variances can be obtained and how to obtain them. He agrees the process can be complicated.

Commissioner Cook said the city would have to issue less variances if there were a way to take certain requests out of the variance realm.

City Attorney Kelly said the recent decision by the Supreme Court has given cities the opportunity to revisit their ordinance parameters.

Council Liaison Fletcher noted that the city is not uniform in terms of lot sizes and dimensions and any attempt to make the ordinance better fit the actual conditions would make things better for everyone.

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Chairman Lucking said the ordinance is pretty clear on how it addresses non-conforming structures and the Supreme Court decision is clear on how they want the cities to handle non-conforming structures. He said that's why he feels it's important to reference the Supreme Court language in the ordinance with a disclaimer that exceptions would be made to bring properties into compliance with building and fire codes.

Commissioner Spiers noted the state doesn't differentiate between non-conforming principal and accessory structures and asked if there should be a distinction in the city's ordinance. City Attorney Kelly said he didn't see a need to regulate them separately.

He said the Supreme Court decision was based on the fact that the City of Minnetonka had inadequacies in their findings.

Commissioner Spiers said he understands there is no distinction made in the court ruling, but questioned the need to separate the types of structures if the city were to allow expansion to comply with other codes. He understands that the approval was to allow for an expansion beyond the minimum building code requirements. City Attorney Kelly agreed, but the basis of the decision was that Minnetonka didn't justify the approval.

Commissioner Beal said he's in favor of doing nothing at this point. Council Liaison Fletcher said that was always an option.

City Attorney Kelly suggested, rather than including the Supreme Court language in the ordinance itself, it could be used as a handout to people seeking to apply for variances. Commissioner Paeper agreed since the decision may change requiring further amendment of the ordinance at a later date.

Chairman Lucking asked about the ordinance in front of the Commission. Commissioner Paeper felt the Commission should wait.

Council Liaison Fletcher said the proposed amendment implies that a property is entitled to something and if it is put into law, someone could try and manipulate the ordinance. Commissioner Beal agreed and said the more the city puts into the ordinance, the more opportunities are there is for it to be gamed.

Commissioner Spiers believes the city should proceed more slowly.

Commissioner Beal discussed the proposal to amend to ordinance to only require front yard setbacks on two yards, stating the side to have a reduced setback should be determined by the city.

## **6. ADJOURN**

Motion by Commissioner Beal to adjourn the meeting. Commissioner Spiers seconded the motion. The meeting was adjourned at 7:55 p.m.

Respectively Submitted  
Gus Karpas - Zoning Coordinator