

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., September 27, 2023
Wayzata City Hall

1. CALL TO ORDER

Chair Hoelscher called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Mike Kirkwood, Minnetrista; Kristi Conrad, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Manager of Code Enforcement; Raina Arnston, Executive Assistant Code Enforcement and Operations; and Interim Executive Director Jim Brimeyer.

Members absent: Deborah Zorn, Shorewood.

Persons in Audience: Eric Evenson, Jason Johnson, Robert Simpson, Michael Faber, and Steve Henches.

4. APPROVAL OF AGENDA

MOTION: Stone moved; Anderson seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Hoelscher extended condolences to the family of Gary Hughes, who was a long-time member of the Board who recently passed away.

6. APPROVAL OF MINUTES - 09/13/2023 LMCD Regular Board Meeting

MOTION: Brandt moved; Walesch seconded to approve the 09/13/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (12), Abstained (1), (Kirkwood). Motion carried.

7. APPROVAL OF CONSENT AGENDA

Anderson referenced the audit of vouchers and noticed the LMCC is paid \$200 every month for representation. He stated that he often watches Board meetings on the LMCC channel and stated that he does not see the Board meetings being played.

Hoelscher stated that the meetings are on the website and on the channel.

MOTION: Walesch moved; Stone seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (09/16/2023 – 09/30/2023); **7B)** Findings of Fact and Order for Variance, 4290 Cottonwood Lane; and **7C)** Findings of Fact and Order for Wayzata Panoway Project.

VOTE: Motion carried unanimously.

8. PUBLIC COMMENTS - Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

A) Meadowbrook Boat Club

Tully presented a request for a variance for the property located at 16508 Grays Bay Boulevard. He displayed an aerial map of this area, noting that the subject property is located between two residential properties. He provided background on the property noting that the applicant was granted a Multiple Dock License in 1972 for two separate parcels for ten watercrafts. The total shoreline for the Grays Bay parcel is 13 feet and is a nonconforming structure, noting that a temporary variance was issued by the Board for the dock located at the property dated October 25, 1972. The variance allowed the continuance of the approximately 80-foot dock until December 31, 1974 and also allowed for a zero-foot setback on the northern side of the property. He stated that the applicant came back before the Board on May 28, 1975 with letters of support from the neighboring properties and the LMCD granted an indefinite extension to the variance as well as an additional length variance to 100 feet, along with an allowance for four boats. In 1978 the Board received complaints from two neighboring property owners regarding how the Club's property was being managed and a request was made for the Board to rescind the variance for the dock. The Board held a hearing on July 19, 1978 and no action was taken and the activity was allowed to continue. The LMCD has continued to license the MDL for over 40 years in the same manner. He continued to provide background information on the site as well as subsequent applications, renewals, and enforcement letters. He commented that the current dock structure is 100 feet in length and 3.5 feet in width, which is .5 feet wider than allowed. He stated that on September 26, 2022 the LMCD sent an enforcement letter to the Boat Club requesting a reduction in width to match the approved size. Staff have worked with both the applicant and surrounding property owners since that time and the variance is brought before the Board today to resolve the ongoing site issues. He summarized the proposal from the applicant which would reaffirm the 1975 Board approval to allow for the storage of four watercrafts, a 100-foot dock structure and zero-foot setback. A request was also made to increase the width of the allowed dock from three feet to 3.5 feet and to maintain a one-foot setback at the 929.4 OHWL to a

zero-foot setback at the end of the dock structure from the southern side site line. He reviewed the current site plan, approved site plan and proposed site plan. He reviewed the site's characteristics. He noted that no comments were received from the Mn DNR, MCWD, or City of Minnetonka but noted that multiple comments have been received from the public in both support and opposition of the variance, which were included in the Board packet. He reviewed items for the Board to consider and the recommendation of staff in approval subject to conditions, which would include reducing the width of the dock from 3.5 feet to three feet.

Walesch referenced the variance proposal from the applicant and confirmed the only difference between that and the staff recommendation would be the dock width. He asked if there would be an option to have fewer boats that could be longer, at the current width.

Tully replied that staff are attempting to reaffirm the variance that existed and clean up the site. He stated that if the applicant wanted to reduce the number of BSUs that could be done through the nonconforming portion of Code.

Walesch commented that it would not seem there would be enough space to fit four watercrafts in there along a 100-foot dock, especially if the water is low.

Kirkwood referenced the mention of 12-foot-wide boat spacing and 8.5 foot spacing.

Tully replied that in 1989 the LMCD incorporated a new system where they looked at the watercraft size and billed upon that system. He recognized that four watercrafts would not fit on the dock, but the applicant has been billed for four BSUs.

Jabbour stated that four boats would need to touch each other in order to fit. He stated that this dock encroaches further on the setback because of the .5 foot in width. He stated that would then require a variance and a hardship would be necessary. He believed that this applicant has a hardship. He stated that he has many docks two feet in width, but those serve one boat. He commented that this dock serves multiple boats and therefore people will be coming and going, and the dock has to be appropriate to service those slips for safety. He asked if that would be a reasonable hardship.

Tully replied that he believes that part of this is due to past licensing of the LMCD that created a hardship, while the other portion would be to bring this into compliance.

Jabbour agreed but stated that the LMCD needs to start documenting hardships for recording purposes.

Nellis stated that he would tend to agree with Jabbour on allowing 3.5 in width for safety. He asked staff for additional input on why three feet is recommended.

Tully replied that staff recommends three feet, rather than 3.5 feet, because that is what the applicant has been licensed for the past 40 years and staff would like to stick to the original variance as much as possible. He commented that if the Board agreed with the 3.5-foot width, which would still be within the dock use area. He confirmed that the current dock is 3.5 feet.

Anderson stated that he likes the idea of approving the staff recommendation and the applicant could come back to request a variance for 3.5 feet in width.

Hoelscher asked if the applicant applied for a variance for the 3.5 feet.

Tully replied that the applicant is requesting to keep the 3.5-foot dock that exists.

Walesch commented that obviously a hardship needs to be shown and, in this instance, this is a small piece of property. He commented that whether the dock is three feet or 3.5 feet, a variance would be needed. He did not think it would make a difference whether the dock is three feet or 3.5 feet as the dock is already owned, and he would not be in favor of making someone construct a new dock. He also agreed that a hardship should be defined, acknowledging that there is hardship with the land as well as the issue of safety that was raised.

Conrad asked at what point the applicant would cut close to the property line with a boat and whether it would encroach into neighboring property.

Tully stated that the applicant has a 13-foot piece of land, which gets down to 12 feet, and the applicant is licensed for three feet of dock which leaves a very small setback. He stated that if the dock that exists is allowed to continue that would leave a zero-foot setback at the end of the dock.

Conrad stated that the applicant is granted four BSUs but cannot fit four BSUs.

Tully replied that the license allowed four watercraft units but did not specify the size or setback on the southern side. He stated that in the 1990s, the size was specified, acknowledging that could not feasibly fit.

Hoelscher stated that the order would say up to four BSUs, up to the allowed size. She stated that someone could choose to put in a small fishing boat.

Hoelscher opened the public hearing at 7:30 p.m.

Jason Johnson, 16648 Meadowbrook Lane, commented that he is the current Commodore of the Boat Club, and they currently have 14 members. He commented that it is in their best interest to limit the size of their boats in order to maximize use. He stated that they have had four boats on the dock in the past and they can manage that for accessibility. He commented that they do not allow boat lifts or boat house structures. He stated that they purchased the dock in 2020 and 3.5 is the standard width. He commented that they would like to reuse that as the additional six inches provides additional safety, especially at the end of the dock. He thanked Tully who has been a great resource throughout this process.

Robert Simpson, 16516 Grays Bay Boulevard, and Michael Faber, 16500 Grays Bay Boulevard, commented that their properties are on both sides of this dock location, and they have a number of concerns. Mr. Simpson noted that the 1972 variance allowed the boat dock to expand from 60 to 100 feet, granted a zero-foot

setback on the northern side, and a maximum of four boats. He stated that the Boat Club dock would not exist today under LMCD rules. He noted that this is a very generous allowance for a 13-foot piece of property. He commented that there was a lot of controversy about the 1975 variance request ruling. He noted two elements of that variance were that there is no formal document about what was requested and neither LMCD nor the Boat Club can provide a legally binding 1975 variance document. He stated that because the 1972 variance was complete, it would be hard to accept anything other than that document. He stated that if the 1975 variance document can be provided, he would accept that. He noted that the validity of the 1975 variance remains unresolved and may need to be resolved legally. He commented that the MDL also impacts the current variance situation, noting that it was granted over 50 years ago and provides more rights than a residential license. He asked why the Boat Club does not have to obey the same rules as a residential dock. He stated that most MDL holders have docks parallel to the shore with multiple slips, whereas this dock is perpendicular with boats lined up and boats have operational and depth issues, especially in low water conditions. He stated that the Boat Club MDL configuration creates safety and operational issues. He stated that the LMCD guidelines state that a practical difficulty must be demonstrated, and he did not believe that the Boat Club meets that. He stated that the Meadowbrook neighborhood is less than one mile away from a public boat launch. He stated that this dock sits between two private residences and does change the character of the neighborhood as it blocks lake views, creates congestion, and lacks parking for the boat dock users. He stated that this dock is .25 miles away and is totally detached from the Meadowbrook neighborhood. He stated that this dock sits in their backyards and takes on the appearance of a mini marina. He noted that the other Grays Bay properties have at least 100 feet of lakeshore compared to this 13-foot section for the Boat Club. He stated that this dock is out of place in the neighborhood. He stated that he moved into his home eight years ago and has closely monitored the activity of the Boat Club. He noted that most of the members have small boats and therefore did not approach the LMCD to challenge the variance until a few years ago when big boats started to appear. He stated that the dock is packed from the shoreline to the end of the dock. He provided a photograph showing four boats on the dock. He believed the boat density should be reduced to three BSUs. He commented that while the Boat Club believes that dock access increases their property values, it decreases the other property values. He emphasized that all four neighbors within 350 feet have provided letters asking that the variance not be approved and ask the Boat Club to conform to the 1972 variance terms, which would reduce the dock length to 80 feet as well as the other terms. He stated that if the recommended boat size were approved, that would increase what has been allowed and that would not be a fair outcome for adjacent properties. He provided a photo showing three boats along the dock, which are adequately spaced and would be much more appropriate.

Mr. Faber commented that his concern is where this will end and relating to the integrity of the LMCD rules. He expressed concern about future requests along with the current situation. He stated that everyone has the right to enjoy the lake, but they want to be reasonable as well.

Steve Henches, 16617 Grays Bay Boulevard, referenced the mission statement of the LMCD which is great and that is what they are attempting to do. He referenced the question of proof that variance was allowed to live in perpetuity and noted that is evident by the fact that it has been allowed to exist for over 50 years. He stated that in relation to safety, he believes that the users can protect their own safety. He stated that their Boat Club meetings focus on safety and the importance of how they use this property. He commented that dropping boats in at a launch is very different than this dock and because they all live within walking distance,

there is no need for parking. He commented that the issue of lake views is distinctly different than the rights of the families that use this dock and have used this dock. He commented that they are only asking for what has been requested and how they have used the property for 50 years. He noted that it would be hard for him to believe that this activity impacts the property value for someone that purchased their property eight years ago when this dock was already in existence for decades.

No additional comments were offered, and the public hearing was closed at 7:50 p.m.

MOTION: Kroll moved; Klohs seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Meadowbrook Boat Club, with a width of 3.5 feet for the property located at 16508 Grays Bay Boulevard in Minnetonka for final approval at the October 11, 2023 LMCD Board meeting.

Further discussion: Jabbour referenced the current site plan noting that he believes that it is important to document why they would be approving the request. He stated that there are logical explanations to all the comments that were made. He commented that in the mid 1970's the widths allowed for vehicles to be towed behind a car changed and therefore boat manufacturers changed their sizes. He stated that in the 1970s staff were extremely aggressive. He commented that today he would have never voted in support of this, but this does exist and has rights, therefore this action cleans up the remnants of the past. He commented that in his opinion staff did an excellent job. He commented that there is no hardship for public access, but there is a hardship to support the wider dock. He commented that the Boat Club has the right to have the dock because it has existed since the 1970s. He stated that if there were legal action, he would hope that these comments would help to provide clarity.

Stone commented that these are all her neighbors. She stated that the 1975 situation is in the Board minutes stating that the variance was approved. She asked if there was a mistake where the subsequent findings of fact were not approved.

Tully confirmed that the minutes state that the variance was approved.

Stone recognized the comment from Mr. Simpson that the notes from the 1975 meeting referenced a 16-foot extension, but the total length of the dock was not clear.

Walesch commented that perhaps legal counsel could provide input on the basis that the dock was approved to extend to 100 feet.

Langel commented that the document does not state 100 feet, but the dock has been 100 feet for 48 years, therefore when there are five decades of approved use that would assume understanding that has been approved as it has been approved year after year. He stated that there was a 1975 meeting where it was decided to extend to 100 feet and the dock has been at that length since that time.

Stone commented that she does see both sides of this issue. She noted that she has been involved in many home sales on Meadowbrook Lane and when the Boat Club comes up, she explains it very carefully. She

commented that there are more families than slips available. She noted that many people bought their homes with the understanding that they would have access to dock space. She stated that she also sees the point of Mr. Simpson relating to four boats, but historically the 100-foot length has been there for 50 years, and the club has paid for a license for four BSUs for 50 years. She agreed with the recommendation of staff relating to the width of the boat and encroachment on neighboring space and the Boat Club should follow that. She stated that in regard to the dock width, it would be over the top to require the Boat Club to replace the three-year-old dock over six inches. She noted that perhaps a clause could be added requiring the width to be reduced to three feet if the dock is replaced.

Anderson stated that he did not believe that the applicant requested a width of 3.5 feet in their request. He reviewed the practical difficulty noted. He stated that he will support the three-foot width and if the width of 3.5 is desired, the applicant could request that.

Jabbour commented that for the record, the 1978 inspection showed a length of 100 feet. He stated that inspection was based on the license requested in 1977. He did not think a variance was needed for the width of the dock. He commented that a variance is needed for a width over eight feet or relating to a setback.

Tully replied that is correct. He stated that this variance specifically said three-foot dock, which is why he included that in his report.

Jabbour asked if a new variance is needed for the width.

Tully commented that the size of the watercraft would need to be included in the variance. He provided additional input on the reference of 16 feet, noting that the staff report stated that the dock was 16 feet too long, at a total length of 100 feet.

VOTE: Ayes (12), Abstained (2), (Conrad and Anderson). Motion carried.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

There was no new business.

14. TREASURER REPORT

Anderson reported that the third quarter information should be available for the October meeting.

15. EXECUTIVE DIRECTOR UPDATE

A) Special Permits Process

Brimeyer stated that after review, the 2011 resolution provided clarity on the process for review of special permits. He noted that staff will be following that process more closely.

Hoelscher noted that resolution would need to be updated to match the current Code and process agreed upon by staff and Water Patrol.

Hoelscher stated that the old winter rules and newsletter were included in the packet, noting that they are collaborating with the consultant to update those documents. She asked that some input be provided to herself or staff to make this a better and more useful document. She confirmed that the Save the Lake solicitation would be mailed out with this mailing to save on postage costs.

Brimeyer noted that last year the winter rules were sent out in January, which is unacceptable. He noted the short turnaround time to provide input.

16. ADJOURNMENT

MOTION: Walesch moved; Jabbour seconded to adjourn the meeting at 8:14 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary