

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, MAY 9, 2017 –7:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Grotting, Spencer and McCoy

ABSENT: None

STAFF: City Administrative Assistant Horner, City Administrator Kaltsas, City Attorney Kyle Hartnett
(in for Bob Vose)

VISITORS: Sarah Borchers, Jason Sievers, Richard Sievers

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes from the April 25, 2017 Regular City Council Meeting.
- b. Approval of minutes from the April 25, 2017 Board of Appeal and Equalization Meeting.
- c. Approval of Accounts Payable; Checks Numbered 17103-17139.
- d. Approval of MnDOT Master Partnership Contract for the Highway 12 Light Maintenance.
 - a. **RESOLUTION NO. 17-0509-01.**

Motion by McCoy, second by Betts to approve the Consent Agenda. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Highway 12 Coalition Meeting
- City Clean Up Day

Grotting attended the following meetings:

- Highway 12 Coalition

- City Clean Up Day

McCoy attended the following meetings:

Betts attended the following meetings:

Johnson attended the following meetings:

- Sensible Land Use Committee Meeting
- WeCan Community Action Partnership Board Meeting
- Mayors Conference in Brainerd
- Loretto Fire Department Breakfast
- Hamel Prayer Breakfast
- Orono Healthy Youth Committee Meeting
- Highway 12 Coalition Meeting
- MN Watershed Meeting
- Regional Council of Mayors Meeting
- Orono School Board Meeting
- West Hennepin Chamber of Commerce Meeting
- Senior Center Volunteer Appreciation Dinner

Horner attended the following meetings:

- MCFOA training
- City Clean-Up Day

Kaltsas attended the following meetings:

7. DIRECTOR GARY KROELLS, WEST HENNEPIN PUBLIC SAFETY - ACTIVITY REPORT FOR THE MONTH OF MARCH, 2017.

Kroells said March was a very busy month with lots of crashes due to weather. Kroells highlighted a few incidents.

For a complete report see the City Council packet

Kroells noted everyone did a great job controlling the large swamp fire. The properties surrounding the area were well protected. Kroells said it burned out by the time it hit Pioneer Creek. Kroells noted there are various theories as to how the fire started. He said they may never know but he does not believe it was intentional.

Grotting noted the changes being proposed to make the intersection at County Road 90 and Highway 12 safer. He wanted to know if there was anything the City should be communicating to MnDOT to help those efforts. Kroells said it was announced that the funding for that intersection has been approved and is part of their plan for 2021.

Grotting asked about the relationship between WHPS and the Vinland Center. Kroells noted WHPS works with them and because they are a treatment facility there are quite a few calls from them. He noted the Vinland Center is charged \$90/ hour for police services which is billed on a quarterly basis.

8. **PUBLIC HEARING: JASON SIEVERS (APPLICANT/OWNER) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 1180 COUNTY ROAD 83 (PID NO. 25-118-24-32-0001) IN INDEPENDENCE, MN:**

- a. **RESOLUTION NO. 17-0509-02** - recommending denial of a variance to allow a reduced side yard setback for the subject property.

Kaltsas stated the subject property is located at 1180 County Road 83. The property is on the east side of County Road 83 and south of the intersection of Timber Trail and County Road 83. There is an existing home and one small detached accessory structure on the subject property.

Kaltsas said the applicant is seeking approval to construct an addition onto the existing home. The addition includes living space as well as a larger garage. The applicant is proposing to remove a portion of the existing house which includes the existing garage. It was noted by the applicant that the existing garage was connected to the home via an enclosed space at some point and used to be a detached garage. The applicant would like to construct an addition (new garage and living space) onto the portion of the existing home to remain. The existing home is currently in compliance with all applicable setbacks for this property (the existing home is setback 30 feet from the north property line).

The applicant is asking the City to consider granting a variance from the side yard setback (north property line) to allow expansion of the existing home. The City requires a side yard setback of 30 feet for properties zoned RR-Rural Residential. The applicant is proposing to construct the home addition so that it is setback 17.6 feet from the side property line rather than 30 feet as required.

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District.
- b. The City would need to find that the plight of the property owner is due to circumstances unique to the property that are not created by the landowner.
- c. The character of the surrounding area is residential. There are several properties in the vicinity that do not meet all applicable building setbacks. The proposed expansion for a single-family home is in keeping with the City's comprehensive plan.

Kaltsas noted there are several additional items that could be considered by the City:

1. The required detached accessory structure setback from the side yard is 15 feet. The applicant could locate a detached accessory structure on this property and meet applicable setbacks.
2. The property directly north of this property has several detached accessory buildings which do not meet applicable setbacks. The owner of the property directly north did provide a note to the City stating that they found the requested variance to be acceptable.
3. The applicant could rotate the proposed addition 90 degrees and meet all applicable setbacks.
4. There are many properties in the City of Independence that have similar conditions to that of the subject property. The City would need to find that the property has unique conditions that can be noted as the basis for granting the variance.
5. Several properties directly west of the subject property appear to have reduced front yard setbacks.
6. The proposed home/garage addition is a two-story addition which will be taller than the portion of the existing structure that is being removed.

Kaltsas said ultimately the City will need to find that the criteria for granting a variance have been met by the applicant. Commissioners reviewed the requested variance and asked questions of staff and the applicant. Commissioners reviewed the proposed setback and asked for clarification relating to the portion of the home that was going to remain versus the portion of the home that was going to be removed. Commissioners confirmed that the existing home meets applicable setbacks. Commissioners reviewed the criteria for granting a variance. Planning Commissioners asked for clarification relating to the criteria for granting a variance and whether or not all criteria needed to be considered. Commissioners discussed that the City has many similarly sized parcels with existing homes. Commissioners discussed the characteristics of the subject parcel and noted that there was a substantial amount of area that could accommodate a home/garage expansion. There was an initial motion to approve the variance request as presented. That motion did not receive a second and did not proceed. There was then a motion to deny the variance as requested. That

motion did not initially receive a second until there was additional discussion. Commissioners ultimately recommended denial of the variance to the City Council with the following findings:

1. *Commissioners could not make the finding that the plight of the property owner is due to circumstances unique to the property not created by the landowner. Commissioners did not find unique circumstances or characteristics of the property that warranted a variance. Commissioners noted that this property is similar to many others in the City and that granting a variance without unique characteristics would establish a precedent for allowing reduced setbacks.*

The City received a letter from the neighboring property owner located at 1212 County Road 83 supporting the requested variance. The Planning Commission recommended denial of the requested variance with the following findings and conditions:

1. The proposed Variance request does not meet all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The Applicant's variance request is denied because it does not meet the criteria established for granting a variance due to the lack of unique conditions or characteristics of the subject property.
3. The Applicant shall pay for all costs associated with the City's review of the requested variance.

Sievers said it will be difficult to turn into the proposed area with the setbacks. Betts asked if the breezeway would disappear. Sievers said it would not. Spencer said the point was that in order to be granted a variance the applicant would have to show hardship concerns and design challenges are not that. Sievers said he wants it to be attached. Kaltsas asked if Sievers would be willing to look at a smaller variance. Johnson said it could be tabled for 60 days so Sievers had an opportunity to think about it.

Motion by Spencer, second by Betts to table pending a letter from the applicant for 60 days. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

9. Consideration of Adopting an Ordinance Amendment Pertaining to Public Safety:

- a. **ORDINANCE NO. 2017-01** – Adoption of a predatory offender dwelling location restriction ordinance.

Kaltsas noted many metropolitan area cities have recently contemplated adopting certain residency location restrictions for predatory offenders. Cities that have adopted local legislation have typically found that such residency location restrictions would be prudent to protect the local health, safety and welfare of their residents.

Cities have adopted a relatively standard and consistent model ordinance language as an amendment to local zoning codes.

- Most ordinances restrict Level II and III offenders.

- The model ordinance defines “protected areas” such as schools, playgrounds, parks, and other places children are known to regularly congregate.
- Level II and III predatory offenders would be prohibited from living a certain distance from those protected areas (e.g. 750 feet measured lot line to lot line).
- Ordinances exempt residences which were established by Level II and III offenders prior to adoption of the ordinance.
- Typically, an offender is also allowed to move into a residence with certain relatives (e.g. parents, siblings, spouses, children etc.) regardless of the proximity to a protected location.

The City of Independence Attorney has prepared an ordinance based on the model language used by other similar communities. While these residency restriction ordinances can be further customized by cities, there are two factors that typically need to pertain to the specific city. Independence will need to consider the type of protected area (i.e. parks, daycare facilities, schools, etc.) and the restricted distance that offenders will be prohibited from living from protected areas.

Types of Protected Areas:

The types of protected areas are typically those areas where children commonly congregate. Most cities identify schools, public parks and licensed daycare facilities. Some cities have found other similarly used areas as needing to be defined in the ordinance. Staff did not identify any similar use areas that appear to need further definition in the ordinance.

Motion by Spencer, second by McCoy to approve Ordinance No. 2017-01 with the recommended changes to II and III being noted. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

10. Discussion of City Council Meeting Dates/Times.

Discussion around ongoing meeting dates and times. It was decided that the next May City Council meeting will be May 30th instead of May 23rd due to schedule conflicts.

Motion by McCoy, second by Betts to move the next May City Council meeting to May 30th instead of May 23rd. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

11. Open/Misc.

12. Adjourn.

Motion by McCoy, second by Spencer to adjourn at 8:30 p.m. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully Submitted,

Trish Bemmels/ Recording Secretary