

City of Independence

Request for a Variance to Allow an Accessory Structure Which Exceeds the Height Limitations of the City's Zoning Ordinance for the Property Located at 2365 Nelson Road

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: April 19, 2016
Applicant: Ruth and Stephen Clark
Owner: Ruth and Stephan Clark
Location: 2365 Nelson Road

Request:

Ruth and Stephen Clark (Applicant/Owner) requests that the City consider the following actions for the property located at 2365 Nelson Road, Independence, MN (PID No. 19-118-24-21-0008):

- a. A variance to allow a detached accessory structure that exceeds the height of the principal structure.

Property/Site Information:

The subject property is located at 2365 Nelson Road which is on the west side of the road and approximately half way between US Highway 12 and Dean Lane. The property is approximately 10 acres in area. The property has a mix of wetlands, wooded areas and open space.

Property Information: **2365 Nelson road**

Zoning: AG - Agriculture

Comprehensive Plan: Agriculture

Acreage: 9.68 acres

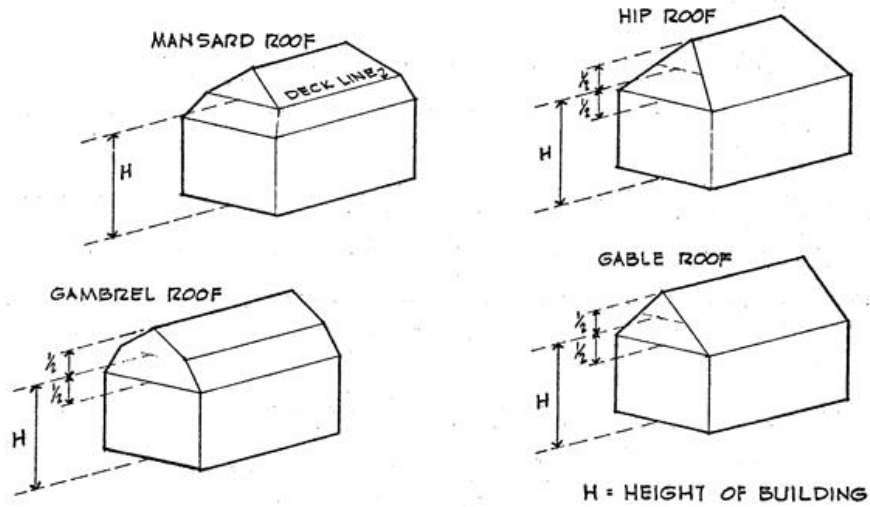


Discussion:

The applicant would like to construct a detached accessory structure on the property. There is currently an existing home located on the property. The City regulates the total square footage permitted for detached accessory structures using a formula. The formula allows a property owner to construct an accessory building which does not exceed 2% of the upland square footage of the property. In this particular case the City has determined that the upland portion of the property is 8 acres. Based on this determination, the total allowable square footage for a detached accessory structure is 6,970 SF (8 acres - 348,480 sf * .02 = 6969.50).

The applicant is proposing to construct a 2,088 square foot detached accessory structure which is less than the maximum size permitted. In addition to the limitation on building size, the City regulates the maximum height of detached accessory structures. The maximum height of an accessory structure shall not exceed the height of the principle structure.

³ The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10.



The City measured the height of the principle structure to be approximately 14 feet. The applicant would like the City to permit the detached accessory building to be 18 feet in height. In order for the applicant to construct a building higher than that which is permitted, the City will need to consider a 4 foot variance. The applicant is proposing to locate the building to the east of the principle structure (shown below and on the attached exhibit).



The accessory structure is proposed to meet all applicable building setbacks. Setbacks for the property are as follows:

Subd. 3. Setbacks. All buildings and structures, including houses with attached garages, must meet or exceed the following setbacks:^a

- (a) Front yard setback ^b 85 ft. from centerline of road*
- (b) Side yard setback ^{b c} 30 ft. from side lot line.*
- (c) Rear yard setback ^b 40 ft. from rear lot line.*
- (d) Setback from lakes, rivers and streams ^b 100 ft. from ordinary high water mark.*
- (e) Setback from wetlands 25 feet from delineated wetland boundary*
- (f) Fences, trees, shrubs, or other appurtenances are not allowed within any road right-of-way.*

^a Substandard lots of record in the shoreland district, as defined in subsection 505.25, may be allowed as building sites provided they meet or exceed 60% of the setback requirements of this subdivision.

^b Except buildings housing livestock which may not be located closer than 150 feet from an existing residential structure on all adjacent property.

The applicant is proposing the following setbacks:

- Front yard setback: 87 feet
- Side yard setback: 77 feet
- Rear yard setback: greater than required

The applicants would access the accessory structure from a new driveway access off of their existing driveway.

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. The applicants are proposing to use the property in a manner consistent with the Rural Residential District. The applicants have attempted to locate the building to meet all other applicable setbacks for property zoned Agriculture.
- b. The applicant has provided the City with information regarding accessory structures and the heights of similar style homes on Nelson Road (see applicants Exhibits 7 and 8). The information provided shows that the proposed accessory building height would be in keeping with the general character of the surrounding properties.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture. The proposed detached accessory building is in keeping with the City's comprehensive plan.

This variance request represents the second height variance for an accessory structure since the adoption of the revised ordinance in 2013. At the time of adoption, the City contemplated initiating a limitation on accessory structure height in an effort to limit potential impacts on surrounding properties and had a proportional relationship to the principle structure. The City additionally reviewed a number of surrounding communities' ordinances to understand context for considering a height limitation. It was noted that many communities limited accessory structure height in residential or rural residential zoning districts. Agricultural zoning districts had less restrictive height limitations. The Planning Commission could recommend a future review of the accessory height limitations. The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance.

Neighbor Comments:

The City has not received any written comments regarding the proposed variance.

Recommendation:

Staff is seeking a recommendation from the Planning Commission for the requested Variance with the following findings and conditions:

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The 4 foot variance will allow the detached accessory building to have a maximum height of 18 feet as measured in accordance with City standards.
3. The proposed building cannot be used for a commercial business or storage.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts.

Attachments:

1. Applicants Narrative
2. Building Plans
3. Site Survey
4. Surrounding Property Information