

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, APRIL 6, 2021 –6:30 P.M.
(Virtual Meeting/ All Attendees)

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 7:35 p.m.

3. PLEDGE OF ALLEGIANCE.

Brad Spencer led the group in the Pledge of Allegiance.

2. ROLL CALL (Note: all noted present were “virtually” present

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

ABSENT: None

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner, City Attorney Vose

VISITORS: Patrick Farnham (Cedar Creek), Manu Chopra, Mike Kuka, Bryant Johnson

3. ****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 Local Board of Appeals and Equalization Meeting Minutes from the April 6, 2021 LBAE Meeting.
- b. Approval of City Council Minutes from the April 6, 2021 Regular City Council Meeting.
- c. Approval of Accounts Payable; (Batch #1 Checks Numbered 20407-20410, Batch #2 Check Numbered 20411-20440).
- d. Approval of an Assembly Permit at 3658 County Road 90 on Saturday, June 12, 2021.
- e. **RESOLUTION 21-0420-01** – Approving a Variance for the Property Located at 6000 Providence Curve (Corrected Resolution that was considered at the April 6, 2021 Council Meeting).
- f. **RESOLUTION 21-0420-02** – Supporting Broadband in Communities Outside of the Immediate Metro Area.

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

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

- Johnson added discussion on construction parking

5. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings: (Virtual)

- Planning Commission Meeting

- LBAE Meeting

Grotting attended the following meetings: (Virtual)

- Planning Commission Meeting
- LBAE Meeting

McCoy attended the following meetings:(Virtual)

- Planning Commission Meeting
- LBAE Meeting

Betts attended the following meetings: (Virtual)

- Planning Commission Meeting
- West Hennepin Chamber Meeting on detours for businesses in Maple Plain
- LBAE Meeting

Johnson attended the following meetings: (Virtual- unless noted)

- Planning Commission Meeting
- National League of Cities webinar
- Hennepin County Active Living Committee Meeting
- LMCC “State of the City Address”
- University of Minnesota webinar
- Senior Community Services Board Meeting
- Sensible Land Use Coalition Meeting
- American Experiment Meeting on Energy
- League of Minnesota Cities First Amendment Rights Meeting
- Zoom with Congressman Phillips
- LBAE Meeting
- Hennepin County meeting on construction equipment

Horner attended the following meetings: (Virtual)

- Planning Commission Meeting
- LBAE Meeting
- Construction meetings with various companies
- BKV architect meeting

Kaltsas attended the following meetings:

- MnDOT meetings on construction efforts
- Cares Funding Meeting

6. John Nyhlen (Applicant) and Jeffrey Cunningham (Owner) request that the City consider the following action for the property located at 9226 Highway 12 (PID No. 07-118-24-34-0005) in Independence, MN:

a. **RESOLUTION 21-0406-01:** Considering approval of a conditional use permit to allow a ground mounted solar system not exceeding 500 SF and denial of a variance to allow a ground mounted solar system that exceeds 500 SF in total area.

Kaltsas said the applicant approached the City in 2020 about the possibility of installing a ground mounted solar system on the subject property. The City provided the applicant with the requirements and discussed the process for initially developing the City's standards relating to ground mounted solar systems. All ground mounted solar systems require a conditional use permit. Ground mounted solar systems are limited to a maximum square footage of 500 square feet.

Ground mounted solar systems have the following requirements:

Subd. 5. Ground-mounted solar energy systems shall conform to the following standards:

(a) Ground-mounted systems shall only be allowed on a parcel with an existing principal structure.

(b) Ground-mounted systems shall be located only in rear or side yards.

(c) Ground-mounted systems shall not be located in the Shoreland Overlay District (d) Ground-mounted systems shall be wholly screened from view from the public right-of-way and adjacent residential structures. Methods for screening shall include berming, fencing, landscaping and/or combination thereof.

(e) Ground-mounted systems shall be located on a parcel of at least 2.5 acres.

(f) Ground-mounted systems shall be setback 40 feet from the rear yards.

(g) Ground-mounted systems shall be setback 30 feet from the side yards.

(h) Ground-mounted systems shall have a maximum area of 500 SF.

(i) The maximum height for any component of the system shall be 15 feet.

(j) Ground-mounted systems shall be in compliance with any applicable local, state and federal regulatory standards, including building, electrical and plumbing codes.

(k) Ground-mounted systems and their support structures shall be designed by a certified professional to meet applicable professional standards for the local soil and climate conditions.

The proposed ground mounted solar system would be located in the rear yard of the existing home. The proposed solar system would be comprised of two separate ground mounted arrays. The total square footage of the two arrays is proposed to be 2,600 SF (1,300 SF per array). The proposed system would exceed the maximum square footage permitted by 2,100 SF. The arrays would be setback approximately 40 feet from the north rear property line (rear yard) and 55 feet from the west side property line (side yard). The required setback for the rear yard is 40 feet and the required setback for the side yard is 30 feet. The proposed ground mounted system would have a maximum height of 9'-3" to the top of the highest portion of the panels.

The City requires systems to be wholly screened from view of the public right of way and adjacent residential structures. There is a residential home and property just to the south of the subject property and proposed location of the ground mounted array. The proximity of the proposed ground mounted system to the nearest residence is approximately 250 feet. The distance from the proposed solar arrays to the Hwy 12 right of way is approximately 350 feet. The City will need to discuss whether or not additional screening should be added to the south property line should the request be recommended for approval. There is some existing vegetation located along the south property line (north property line of the adjacent property). One additional consideration relating to screening is that the panels will be oriented to face south.

The applicant has provided the City with a site plan and images of the proposed solar system. The system is comprised 120 panels. The panels are oriented to the south and will be installed at a 30-degree angle to the ground. The proposed panels are mounted to a galvanized metal racking system. The racking system is proposed to be secured to the ground using helical pilings. The proposed solar panels are a mono Perc cell panel that has an anti-reflection coating. This type of panel is typically a little darker blue in color.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. *The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.*
2. *The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.*
3. *Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.*
4. *Sufficient off-street parking and loading space will be provided to serve the proposed use.*
5. *The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.*
6. *The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.*
7. *The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.*
8. *The proposed condition use is consistent with the comprehensive plan of the City of Independence.*
9. *The proposed use will not stimulate growth incompatible with prevailing density standards.*

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)

The City has discussed the proposed ground mounted solar system with the applicant. The proposed ground mounted solar system exceeds the City's maximum size for ground mounted solar systems. The energy generated by this system 38.4 kW (AC) falls just below the maximum amount permitted by the state

tariff limits for residential systems. The applicant has noted that the homeowners are planning on remodeling the home and installing a ground source HVAC system. The ground source system will generate a significant energy need for the property. There are a few additional considerations that should be noted by the City. The maximum size of permitted by a ground mounted solar system (500 SF) was based on the size of a typical residential solar system. This system would require the City to grant a variance to the maximum size to allow 2,100 additional square feet of surface area. The criteria for granting a variance are provided within this report. The City will need to find that the size limitation on ground mounted systems creates a hardship to the owner. Additionally, the City will need to also find that the granting of a variance will not alter the essential character of the area and maintain the reasonable use of the property.

- The proposed system is a residential system that generates an amount of energy that comes in just below the maximum permitted for a residential installation. The system will generate approximately 62,000 kWh in the first year. The average residential property across the US uses approximately 10,649 kWh per year and as much as 15,000 kWh per year. The proposed system meets the location, setback and maximum height requirements of the zoning ordinance.
- The property has only one neighboring and potentially impacted property. The visibility of this system from the Hwy 12 right of way is limited or fully screened. The existing vegetation that separates the two properties is comprised primarily deciduous trees/shrubs.
- The location of the proposed solar system is close to a potential wetland area (see yellow – possible and blue - probable areas below). The applicant is going to need to verify the extents of the wetland and confirm that no impact or a de minimis impact to the wetland is permitted. This may require a wetland delineation, adjusting the location within this general area of the property or splitting the system into three shorter arrays versus two longer arrays. The City will need to determine if the system should be further screened from the south property line.

The City will also need to find that the proposed variance and conditional use permit meet the criteria for granting both and continues to allow the reasonable use and enjoyment of the surrounding properties. This site located off of US Hwy 12, the orientation of the proposed solar system and the relationship to the surrounding properties all aid in the mitigation of potential impacts relating to the ground mounted solar array. The City has received some verbal questions relating to the project and whether or not this is a commercial installation. It was noted that this is a residential installation. The City has not received any written comments regarding the proposed variance and conditional use permit.

Kaltsas said the Planning Commissioners discussed the request for a variance and conditional use permit to allow a ground mounted solar system that exceeds the allowable square footage of 500 SF. Commissioners initially tabled this item to allow the applicant an opportunity to address the Commissioner and provide additional information relating to the need for the additional size. It was noted by the petitioner that their usage would be less than the amount of power generated by the proposed system and that they would be selling the power that is not use back to the utility provider. They noted that this would help with the economics of the proposed system and create a faster rate of return on the solar investment. Commissioners discussed the intent of the 500 SF limitation and asked whether or not a “typical” residential system could be constructed within the parameters established.

Staff noted that the City has had only one other request for a ground mounted system which was approximately 450 SF and that CUP was approved. Commissioners believed that the intent of the ordinance in place was to allow ground mounted systems that would supply power to support a residential home, but that would not generate additional power for sale or in excess of need. Commissioners ultimately recommended approval of a conditional use permit to allow a 500 SF system and denial of the variance requesting additional

square footage. The Planning Commission recommended approval of the conditional use permit to allow a ground mounted solar system and denial of the requested variance to allow a 2,6000 SF ground mounted system with the following findings and conditions:

1. The proposed conditional use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. Approval of the conditional use permit will be subject to the following conditions:
 - a) The applicant shall verify the extents of the wetland boundary and confirm that no impact or a de minimis impact to the wetland is permitted by all regulatory authorities. This may require a wetland delineation. Based on the information provided relating to the wetland boundary, the proposed location and layout of the solar array may need to be adjusted or the array may need to be split into three shorter arrays versus two longer arrays.
3. The conditional use permit will include the following conditions:
 - a) The conditional use permit will allow a 500 SF ground mounted solar system that is installed in accordance with the approved plans attached hereto as Exhibit A.
 - b) The ground mounted solar system shall be constructed in accordance with all applicable zoning code, building code and other applicable standards.
4. The variance to permit a 2,600 SF ground mounted solar system is denied based on the following findings:
 - a) The City finds that the criteria for granting a variance have not been satisfied by the applicant.

Specifically, the City finds the following:

1. The proposed 2,600 SF ground mounted solar system is larger than needed to support a residential property and does impact the essential character of the property and surrounding properties.
2. The proposed variance, if granted, would allow a ground mounted solar system that provides energy in excess of the needs of the residential property.
3. Potential impacts resulting from the larger ground mounted solar system have not been adequately mitigated by the applicant and would impact the adjacent property.
5. The applicant shall pay for all costs associated with the review and recording of the resolution granting approval of the conditional use permit and variance.

Johnson said it is hard to go beyond the ordinance in place. Grotting said there would not be a return on investment. Vose said economic hardship does not warrant a variance. He said “use” variances may not be granted as the code does not allow it. Betts said the Planning Commission did a very good job in their review. The applicant should have looked at the ordinances as it is clear and there is no commercial use allowed.

Farnham said the return on investment was a part of the application, but the main purpose was to supply energy for the applicant. They use about 25kw of energy so a 500 square foot solar system would only provide for half of that need. Farnham also noted that solar has environmental benefits with low impact on surrounding grounds and wetland. He said the ROI is important but not the main driver.

Motion by Betts, second by Spencer to approve RESOLUTION 21-0406-01: Considering approval of a conditional use permit to allow a ground mounted solar system not exceeding 500 SF and denial of a variance to allow a ground mounted solar system that exceeds 500 SF in total area. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

7. Mike Kuka (Applicant/Owner) is requesting the following action for the property located at 4405 County Road 92 N. (PID No. 0411824310002) in the City of Independence, MN:

a. **RESOLUTION 21-0406-02:** An amendment to the existing conditional use permit, allowing a commercial riding stable, to construct a new detached accessory structure to be used as a tack room on the property located at 4405 County Road 92 N.

Kaltsas said the City approved a conditional use permit (CUP) for the subject property in 2016 to allow a commercial riding stable. The CUP was amended in 2018 to allow additional horses to be boarded on the property. The applicant is now seeking an amendment to allow a tack room to be located on the property. A commercial riding stable is further defined in the City's ordinance as follows:

Subd. 69. "Riding stable, commercial." Stables, barns, and facilities for the keeping and riding of horses, both indoor and outdoor, operated as a livery or boarding stable, or other commercial recreational use. The commercial riding stable currently permitted allows the boarding of horses as well as hosting a limited number of additional equestrian related events within the facility. The proposed tack room would be located near the pen areas on the south side of the property. The applicant is currently using a mobile trailer as a tack room on the property. Staff notified the applicant that the City would require an amendment for any type of structure on the property including a temporary trail Staff has reviewed the request and offers several discussion points for further consideration by the City.

1. The applicant is proposing to use the existing trailer for several years prior to being able to construct a permanent structure in this location. Staff is generally agreeable to the use of the trailer for a temporary tack room given its location and proximity to surrounding properties.
2. The applicant has noted that they intend to construct a permanent structure in the future. The City could allow an amendment to the CUP which would allow the temporary trailer for period of time (5 years or similar) at which time the permanent structure would need to be constructed and the temporary structure removed.
3. The applicant further noted that the location of the proposed tack room near the existing pens is important to the operation of the commercial riding stable.
4. The temporary trailer could not be occupied as a temporary residence or for living quarters at any time.

Commercial riding stables are permitted as conditional uses in the Agriculture zoning district. In order for the City to consider approval of an amendment to the conditional use permit request it must find that it meets the criteria established within the zoning ordinance. The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. *The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.*
2. *The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.*
3. *Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.*
4. *Sufficient off-street parking and loading space will be provided to serve the proposed use.*
5. *The proposed conditional use can be adequately serviced by public utilities or on-site sewage*

treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city from pollution hazards.

6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.

7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.

8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.

9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The subject property is located directly south of the Shrine Horse Facility which operates as a commercial riding stable. The relative size of the property, its access to County Road 92 and geographic seclusion help to mitigate potential issues related to the proposed tack room addition. The City is not aware of any current complaints or concerns relating to the operation of the commercial riding stable on this property. The proposed conditional use permit amendment to allow a tack room (temporary trailer and then permanent detached accessory structure) is consistent with the Agricultural nature of the property and surrounding land uses. The Planning Commission will need to determine if the requested conditional use permit amendment meets the criteria for granting a conditional use permit.

The Planning Commissioners reviewed the request and asked questions of the applicant and staff. Commissioners discussed the temporary use of the trailer and the timing for the replacement with a permanent structure. It was noted that the application intends to replace the temporary structure within the five-year window considered. Commissioners found that the request for an amendment met the criteria established in the City's zoning ordinance and confirmed that the conditions limiting use to a tack room were sufficient. Commissioners recommended approval of the CUP amendment.

Planning Commissioners recommended approval of the request for a conditional use permit amendment with the following findings and conditions:

1. The proposed conditional use permit amendment request meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
3. All conditions stated in **Resolution No. 16-1213-02 AND 18-0710-01** shall remain in force.
4. Approval of the conditional use permit amendment shall be subject to the following additional conditions:
 - a) The City will allow the temporary use of the existing trailer as a tack room for a period not to exceed five (5) years from the date of City Council approval.
 - b) The temporary trailer will need to be removed from the location upon completion of a permanent detached accessory structure.
 - c) The City will permit a permanent tack room in the location designated on the approved site plan attached hereto as **Exhibit A**. The overall size of the permanent detached accessory structure shall be less than 1,500 SF.
 - d) The temporary trailer shall not be occupied as a temporary residence or for living quarters at any time.
5. The applicant shall pay for all costs associated with processing and recording the application for a conditional use permit amendment.

Kuka said he was installing a roof on the south side of the trailer that will be unattached and asked if that was ok. Kaltsas said that was fine. Johnson asked if the trailer was attached to the ground. Kuka said it is blocked up at the moment to make it sturdy and he is going to anchor the corners as well.

Motion by Johnson, second by Spencer to approve RESOLUTION 21-0406-02: An amendment to the existing conditional use permit, allowing a commercial riding stable, to construct a new detached accessory structure to be used as a tack room on the property located at 4405 County Road 92 N. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

8. Mark Kroskin (Applicant/Owner) is requesting the following action for the property located at 6000 Providence Curve (PID No. 1411824420008) in the City of Independence, MN:

a. **RESOLUTION 21-0406-03:** A variance to allow a detached accessory structure to be located closer to the side and rear property lines than otherwise permitted on the property located at 6000 Providence Curve.

Kaltsas said the applicant approached the City about the possibility of locating a new detached accessory structure in the northeast corner of their property. The applicant noted that they would like some additional storage space and identified the proposed location as the spot most desired for a multitude of reasons. The proposed detached accessory structure would be 1,050 SF (30' x 35') and would have a double overhead door. The proposed building would include a second story storage loft. The exterior building materials proposed would match the siding and roof of the house.

The applicant is seeking a variance from the rear and side yard setbacks to allow the proposed structure. The variances requested would allow the construction of a detached accessory structure to be located closer to the east and north property lines than permitted by the City. The applicant is proposing to setback the proposed structure 10'-0" from the east property line and 10'-0" from the north property line. The required rear yard setback is 40' and the required side yard setback is 15'. Setbacks for RR-Rural Residential Properties are as follows:

Side Yard Setback for Detached Accessory Structures:

Required: 15'-0"

Proposed (East): 10'-0" (variance of 5'-0")

Rear Yard Setback for Detached Accessory Structures:

Required: 40'-0"

Proposed: (North): 10'-0" (variance of 30'-0")

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. The applicants are seeking a variance that exceeds the typical setback granted for properties in this area.

b. The property backs up to an Out lot owned by the Providence HOA. The City recently adopted standards that would allow the City's ABRC to consider allowing relief of the rear yard setback to a minimum of 15' (see actual ordinance provision below). The applicant was provided with this information.

a. The property shares a rear yard property line with an out lot, and the setback will be at least 15 feet.

There are several criteria that would need to be met in order for the ABRC to consider granting relief to the setback. One of those criteria is consent or agreement on the reduced setback from the property owner(s) of the adjacent property (HOA).

c. The character of the surrounding area is residential. The proposed detached accessory structure would be in keeping and consistent with the surrounding uses found in this neighborhood.

d. There is an existing detached accessory structure located behind the house on the subject property. The overall size of this structure is approximately 475 SF. The City allows a maximum of 1,850 SF for the total permitted for all detached accessory structures on properties less than 2.5 acres. The total SF in the after condition would be 1,525 SF which is less than the maximum permitted.

e. The alternate septic site location is located in the general vicinity of the proposed detached accessory structure. Moving the structure further away from the property lines (to the west and south) potentially encroaches further into the alternate site. This site is an estimated area and could likely be adjusted to the south and east when needed in the future.

f. The applicant has noted that they would like to maintain the existing evergreen trees in this area and the proposed location makes this possibility more feasible.

The City received written acknowledgement from the Providence HOA that it approves the requested variance.

Planning Commissioners discussed the application and asked questions of staff and the application.

Commissioners reviewed more specifically the existing property conditions and the need for an additional five-foot encroachment into the setback on both sides of the proposed shed. Commissioners asked about the location of the secondary septic site and its proximity to the proposed shed. Commissioners discussed the existing trees on the property. Commissioners ultimately found that the request for a variance from the north (rear property line) property line would meet the criteria recently established in the amended zoning ordinance and could have been considered by the Accessory Building Review Committee (ABRC).

Commissioners recommended approval of the rear yard setback variance only with a condition that the applicant provide written correspondence from the Providence HOA acknowledging consent to the reduced

setback. The City has received the written acknowledgement. Commissioners did not recommend approval of the reduced side yard setback.

Planning Commissioners recommended approval of a variance to allow a reduced rear yard setback of 15 feet with the following findings and conditions:

1. The requested 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 City finds that the criteria for granting a variance have been satisfied by the applicant.

Specifically, the City finds the following:

- a. Residential use of the property is consistent with the Rural Residential District.
- b. The property backs up to an out lot owned by the Providence HOA and they have provided written acknowledgement of their approval of the requested variance to the City.
- c. The character of the surrounding area is residential. The proposed detached accessory structure would be in keeping and consistent with the surrounding uses found in this neighborhood.

3. The variance will permit a 30-foot reduction (40 feet required, 10 feet permitted) of the rear yard setback (north property line) and no reduction of the side yard setback east property line which requires a 15-foot setback) to allow the proposed detached accessory structure as depicted on the site plan and building plans attached hereto as Exhibit A. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.

4. The applicant shall submit a drainage plan to the City at the time of building permit application. The drainage plan will be reviewed by the City to ensure that the proposed improvements do not adversely impact any of the surrounding properties.

5. The applicant shall pay all fees to the City associated with the review and approval of the requested variance.

Spencer asked about Resolution #3 and Kaltsas noted it would be corrected to correct language.

Motion by Spencer, second by Betts to approve RESOLUTION 21-0406-03 per Staff revisions to be final approved on the consent agenda at the next meeting: A variance to allow a detached accessory structure to be located closer to the side and rear property lines than otherwise permitted on the property located at 6000 Providence Curve. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

9. Bryant Johnson (Applicant) and Hilltop Farm, Inc. (Owner) is requesting a concept plan review for a subdivision of the property located between CSAH 90 and CSAH 83 and identified as PID No. 2611824130001. The proposed subdivision would ultimately require the rezoning of the property and a minor subdivision and would create eleven rural residential lots.

Kaltsas said the applicant is asking the City to consider and provide feedback relating to a concept plan for the proposed subdivision of a portion of the subject property. A concept plan allows the City the opportunity to initially review the proposed subdivision and provide feedback and comments to the applicant prior to the

submittal of any applications for rezoning and preliminary plat. In order for the City to ultimately consider approval of a plan similar to the proposed concept plan, the following steps would be required:

1. Rezone the property to the new zoning district.
2. Consider Preliminary Plat approval.
3. Consider Final Plat approval.

Kaltsas noted the City is in the process of updating the Comprehensive Plan from the 2030 plan to the 2040 plan. The City's 2030 plan identifies this property as Rural Residential. The rural residential designation allows for a general development density of 1 unit per 5 acres. The 2040 Comprehensive Plan guides the eastern portion of this property for sewer residential.

2030 Comprehensive Proposed Subdivision Concept Plan

The applicant has prepared a concept plan for review by the City. The City has preliminarily reviewed this plan and provides a general review of the various aspects within this report. The 2030 and 2040 Comprehensive Plan both guide the western portion of this property for RR-Rural Residential. Rural Residential properties can realize the following number of lots:

Subd. 3. Density. Lots of record in the rural residential district may be divided or subdivided into the following maximum number of lots, said maximum number to include the lot for any existing dwelling unit or other principal use: (Amended, Ord. 2010-01)

Area of Lot Maximum Number

of Record of Lots Permitted

7.5 acres or less One

7.6 through 12.5 acres Two

12.6 through 17.5 acres Three

17.6 through 22.5 acres Four

22.6 through 27.5 acres Five

27.6 through 32.5 acres Six

32.6 through 37.5 acres Seven

37.6 through 42.5 acres Eight

42.6 through 47.5 acres Nine, plus one addn. lot for every five addn. acres of land.

Based on a traditional Rural Residential subdivision, it is estimated that western portion of this property guided for RR can yield 12 lots (9, plus $(62.6 - 47.5 = 15.1)$ ($15.1/5 = 3$). The applicant is asking for the City to consider granting 13 lots based on a different way to calculate density (taking $62.6 - 42.6 = 20$) ($20/5 = 4$) which would yield 13 lots. The City has historically calculated density based on the high-end number shown in the table and not the low-end number. Further direction will need to be provided relating to the density permitted.

The City has discussed the potential subdivision of this property with the applicant. The City discussed a couple of key considerations relating to the future development of this property and adjacent properties. The City noted that the Metropolitan Council has identified a potential future (beyond 2040) sewer expansion area which encompasses this property (see map below). The initial review of the subdivision contemplates a high-level review only of the proposed concept development plan. A detailed review of the storm water, grading, wetlands and infrastructure details will be completed prior to consideration of any future applications. The City does not formally approve or deny a concept plan. The concept plan review will provide direction and

comments to the applicant for their use during the preparation of future applications. The following comments should be considered by the City:

1. The proposed plan shows lots that would be accessed via a new cul-de-sac that would be connected to County Road 90. Hennepin County would ultimately need to approve any proposed road connection and may require both northbound and southbound turn lanes. It does not appear that the proposed access point would meet the County's spacing guidelines from Turner Road. This property does have the ability to be accessed via the Turner Road right of way.

a. Hennepin County has preliminarily reviewed the concept plan and provided the following comments:

We offer the following comments generally in support of city notes included in the city's summary report along with some additional consideration:

- We do not support the proposed cul-de-sac street app. 400' N of Turner Rd (660' spacing guidelines minimum)*
- We very much support the idea of directing access to Turner Rd and requiring the developer stub the street to city specifications at this alignment.*
- Northside alignment to Quass Cutoff Rd is perhaps another preferred access alignment*
- Regardless of street alignment, we recommend full left and right-turn lanes for the access to provide residents and visitors a safer, more comfortable deceleration into the site (11 SF homes/50mph/ADT 2,500)*
- Aligning to existing public streets while strongly preferred, presents a challenge to match turn lanes for the existing west side of intersection. We welcome further discussion with the city on how best to deliver this amenity as well (now or in the future). Unfortunately, I do not see a pavement overlay on our schedule (2021-2024) at this time*
- If/when replatting we support dedication to match a 50' half right-of-way as proposed along both CSAH 90, and CSAH 83. There likely would need to be additional ROW at turn lanes however;*
- We recommend the city consider a 'ghost plat' of how to incorporate this new development into a future internal planned street network (esp N-S) with local connections to existing streets. Need to minimize connections to county road We appreciate any further consideration and welcome additional discussion as needed*

2. The proposed development does not consider the use of the existing right of way known as the unimproved portion of Turner Road to the south. The City should discuss the future of Turner Road and whether or not this development should incorporate Turner Road into the design. At a minimum, the City may want to consider requiring dedication of the additional 33 feet of right of way.

3. The length of the proposed cul-de-sac (greater than ¼ mile) should be noted by the City. In addition, the City may want to consider a future connection of the proposed road to the east. The current plan does not provide for a future connection. The City would generally require that roads be extended to the edge of the property unless it is not feasible for a future road connection due to natural features, topography, etc.

4. The property abuts an industrial property to the north. The applicant should consider buffering and or berms along the north property line to mitigate the existing industrial development.

5. There are probable wetlands that show up on the national wetland inventory in several locations on this property (see image below). A wetland inventory will be required to be prepared and submitted with preliminary plat.

6. The applicant will need to confirm that all lots meet the minimum of 2.5 acres of upland (buildable) area. In addition, the applicant will need to confirm that all lots can accommodate a primary and secondary septic site.
7. It appears that all of the proposed lots meet the minimum lot frontage requirements.
8. The overall property would need to be split in order to accommodate the proposed development. The remainder 90 acres would become a separate lot and likely not plated at this time.
9. The applicant will need to provide more information relating to the ownership and use of out lot A.
10. It is anticipated that the proposed homes would be custom built.
11. The proposed concept subdivision would be subject to the City's park dedication requirements. No park land dedication is shown on the concept plans. The City should provide feedback relating to possible park dedication on the subject property. It may be desirable for the City to consider some park development on this property. Discussion relating to park dedication should be provided by the City. The standard park dedication per lot fee would otherwise be applicable to all newly developed lots.

Staff would like direction and feedback relating to the general design and layout of the proposed subdivision. The City will need to provide direction relating to whether or not Turner Road should be maintained in its current location and eventually improved to a full road section. This determination will likely be necessary prior to the consideration of this development moving forward. The City should consider whether or not a future path should be maintained for the extension of utilities to the west noting that there is not another undeveloped route. Consideration of a cluster development that would maintain a developable area that could accommodate the expansion of utilities in the future could be considered. The City should also provide additional feedback and direction relating to the development of Turner Road, future use and dedication of additional right of way.

Planning Commissioners discussed the proposed concept plan and asked questions of the applicant and staff. Commissioners noted that access is going to be an important issue to resolve prior to moving forward. Commissioners noted that Turner Road should be considered and even if not fully constructed at this time, provide the point of access into the development rather than the proposed "mid-block" connection to CSAH 90. Commissioners noted that there are properties located along Drake Drive that need access to an improved road.

The City Council should review the plans and provide feedback to the applicant pertaining to the proposed concept plan. No formal action can be taken by City Council on the concept plan. There are additional steps that will need to be taken for any development of this property to occur.

Spencer noted connectivity could be through Turner Road and emergency vehicles could use an east/ west development. Kaltsas said it is a good conversation and trying to anticipate issues with different types of connections. McCoy asked if Turner Road sewer connections would be better to the west. Kaltsas said if Turner is built out than the sewer line could be built that way.

Johnson said the wetland delineation was done but the file was too large to email. He said there are 2.5 buildable acres per lot. Hennepin County said access off of County Road 90 would never happen so Turner would be better for access. He said once the eastern portion is completed there will be access from Main Street. Betts asked Vose what the legal implications are for the City if Turner is not used as a road. Vose said the City could vacate or close Turner Road but alternate access has to be considered. He said it was a difficult question to answer in the abstract. Grotting said it was cost prohibitive to use Turner Road due to the wet

conditions. Betts asked about developing a road to the North. Kaltsas said that is a good point and illustrated different ideas including Quass etc. Grotting said if Turner went all the way through it would be very busy or they would come through Drake. He noted all the traffic cannot be funneled to County Road 83. Spencer asked about Lot 1 with the wetland in the middle of it and what challenges would be presented for septic. Johnson said there is a new plan showing the delineated wetlands. Kaltsas said that maybe there is not as much wetland as originally highlighted. Grotting asked Mayor Johnson about the tiling. Johnson said the water runs down along the north edge of Turner Road. Betts said she would ride horseback along there, and it would get muddy but not impassable. Spencer said he understands Johnson's cul-de-sac plan, but he thinks the development of Turner could be valuable to the City. He said he would not recommend abandoning Turner Road. Mayor Johnson noted Hilltop donated 30' of land to Turner Road.

10. MS4 Permit Update – Consider Approval of and Authorization to Submit Updated Permit Application/TMDL Compliance/BMP Activity Schedule in Accordance with MPCA Requirements.

The MPCA released the new MS4 permit in November 2020. The City of Independence has until April 15th to submit a permit application, including an updated TMDL form. After submittal, the application will be reviewed by the MPCA and go through a 30-day public notice before being approved. Once the application is approved, the City will have 12 months from the date of approval to implement the new permit requirements. The new requirements include:

- Increased education requirements
- Requiring a public education activity event
- Additional regulatory mechanisms for pet waste and salt management
- Increased documentation for inspections
- Increased training for all field staff (including police and fire departments)
- Compliance schedule for TMDLs

We are requesting the City Council authorize the submittal of the attached permit application and TMDL compliance/BMP activity schedule to the MPCA.

Johnson noted it would be good to put educational information in our newsletter and Kaltsas agreed.

Motion by Spencer, second by McCoy to approve the MS4 Permit Update –Approval of and Authorization to Submit Updated Permit Application/TMDL Compliance/BMP Activity Schedule in Accordance with MPCA Requirements. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

11. Open/ Misc.

Johnson noted the request to park construction trailers in the church lower parking lot over the summer as needed.

Motion by McCoy second by Grotting to approve the parking of construction vehicles for staging purposes at the church parking lot over the summer as needed. Ayes: Johnson, Spencer, McCoy, Grotting and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

12. Adjourn.

Motion by Spencer, second by Betts to adjourn at 9:20 p.m. Ayes: Johnson, Grotting, McCoy, Betts, and Spencer. Nays: None. Absent: None. None. Abstain. None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary