

MINUTES OF A MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, FEBRUARY 16, 2020 – 7:30 P.M.
(Virtual Meeting)

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Palmquist at 7:30 p.m.

2. OATH OF REAPPOINTED COMMISSIONERS

Volkenant sworn in by Horner for a three-year term as Planning Commissioner.

3. ROLL CALL (all virtual)

PRESENT: Commissioners Garner, Volkenant, Dumas and Palmquist

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner

ABSENT: Commissioner Thompson

VISITORS: Mayor Johnson, Andrew Toumisto

4. Approval of Minutes:

- a. December 15, 2020 Planning Commission Meeting
- b. January 5, 2021 City Council Meeting Minutes (For Information Only)

Motion by Dumas to approve the December 15, 2020 Planning Commission minutes, second by Volkenant. Ayes: Volkenant, Gardner, Dumas, and Palmquist. Nays: None. Absent: Thompson. Abstain: None. Motion Approved.

5. **PUBLIC HEARING:** 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. 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 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. Staff is seeking a recommendation from the Planning Commission pertaining to the request for a conditional use permit and variance with the following findings and conditions:

1. The proposed conditional use permit and amendment 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 2,600 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 City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
 - a. The proposed residential ground mounted solar system will not take away from the essential character of the property or surrounding properties.
 - b. The proposed variance will allow a larger residential ground mounted solar system that provides energy solely for this residential property.
 - c. Potential impacts resulting from the larger ground mounted solar

system are adequately mitigated as a result of the properties location and proximity to surrounding properties.

b) 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.

Dumas asked if any neighbors had an issue. Kaltsas said one property owner near the east had inquired on the application but now formal or written comments. Gardner noted it is pretty isolated and pretty commercial.

Gardner opened the Public Hearing.

Public Hearing Open

No comments.

Palmquist motioned to close the Public Hearing, second by Dumas.

Public Hearing Closed

Gardner asked why all this was needed and that we had denied previous applications as quasi-commercial. He asked how this creeps over that line as it is pretty big for a single house. Kaltsas agreed it is a pretty big system. Dumas asked if the plan was to use it for electric heat pump. Kaltsas said yes that it was to be used in that manner. Gardner said it was well-hidden but very large. Kaltsas said it maintains state tariffs for residential systems and that could be the threshold to consider. He noted the system needs to be 40 kilowatts lower than AC.

Palmquist said this is an option for future energy and generally accepted but he feels it is too big as far as scale of the scope. He thinks it could set a precedent for the City. He noted this was 400% increase over what the ordinance currently allows. Dumas agreed it was a really large system. Kaltsas said the net metering is regulated through the utility and this system would max out that metering while coming in just under the threshold to have a faster rate of return. Palmquist said p.4 of 520.21 – Practical difficulties should be guiding the decision as it lists the standards for granting the variance. Palmquist said he does not think there is a practical difficulty being established. Volkenant said what is the intent of the owner for so large of a system and thought more information should be requested of the homeowner.

Motion by Volkenant, second by Dumas to table the request for a variance to allow a ground mounted solar system that exceeds 500 SF in total area until more information is obtained from the applicant. Ayes: Volkenant, Dumas, and Gardner. Nays: Palmquist. Absent: Thompson. Abstain: None. Motion Approved.

6. **PUBLIC HEARING:** Andrew Toumisto (Applicant/Owner) requests that the City consider the following action for the properties located at 4024 and 4084 Lake Sarah Drive South (PID No.s 02-118-24-43-0004 and 02-118-24-43-0005) in Independence, MN:

- a. A minor subdivision to permit a lot combination which would combine the two subject properties into one property.

Kaltsas said in 2015 the previous owner of this parcel subdivided the original property into 5 (5) buildable lots known as HENDLEY ADDITION. There were three lots created on Lake Sarah Drive South and two

lots created on CSAH 11. The applicant initially purchased 4084 Lake Sarah Drive South (north parcel) and constructed a home on the property. The applicant recently acquired 4024 Lake Sarah Drive South. Following acquisition of the property, he located a small, detached shed on the north side of the property not knowing that it was not permitted without a principal structure. The City notified the applicant that the shed was not permitted and discussed possible solutions which included combining the two properties into one property. The applicant would like to combine the properties back into one (1) lot for the purpose of using the entire property as one property. There are several aspects of this property that should be noted by the City during consideration of the application:

1. The properties are heavily wooded and have a large wetland on the east side.
2. The existing shed is considered an illegal structure and will have to be removed if the lot combination is not approved. If approved, the detached accessory shed would be permitted and would meet applicable setbacks.
3. Based on the current zoning and combined lot size, this property could be subdivided again in the future. The minimum lot size in the RR-Rural Residential zoning district required in order for subdivision to be considered is 7.6 acres. The current standard would allow a maximum of two lots for properties less than 12.6 acres (this property will be 12.51 acres combined).
4. The existing home and accessory buildings will meet all requisite setbacks in the after condition.
5. The applicant is proposing to dedicate the new and amended 10' drainage and utility easements as shown on the proposed plan. The City will consider vacating a portion of the drainage and utility easement that is located along the east/west property line to be removed (see below). The applicant shall execute the necessary documents to clean up any easements as determined necessary by the City. The proposed subdivision to allow a lot combination appears to meet all applicable standards of the City's zoning and subdivision ordinance. The combined lot will fit into the surrounding area and should have minimal impacts on the surrounding properties. Staff is seeking a recommendation from the Planning Commission for the requested minor subdivision with the following findings:

1. The proposed minor subdivision to allow a lot combination meets all applicable criteria and conditions stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.
2. The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
3. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.
4. The Applicant shall execute and record the requisite drainage and utility easements with the county within six (6) months of approval.

Gardner opened the Public Hearing.

Public Hearing Opened

Toumisto said he is buying the property from his in-laws and didn't know he could not put a shed on that property prior.

Dumas motioned to close the Public Hearing, second by Thompson.

Public Hearing Closed.

Motion by Palmquist, second by Dumas to approve a minor subdivision to permit a lot combination which would combine the two subject properties into one property for the properties located at 4024 and 4084 Lake Sarah Drive South (PID No.s 02-118-24-43-0004 and 02-118-24-43-0005) in Independence, MN: Ayes: Volkenant, Dumas, Gardner and Palmquist. Nays: . Absent: Thompson. Abstain: None. Motion Approved.

8. Open/ Misc.

Palmquist asked where the Comp Plan is at and Kaltsas said it is being looked at as getting agreement on density through Met Council. He hopes to have resolution in 4-6 weeks.

9. Adjourn.

Motion by Palmquist, second by Volkenant to adjourn at 8:40 p.m.

Respectfully Submitted,

Trish Gronstal/ Recording Secretary