

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE PLANNING COMMISSION  
TUESDAY, JULY 17, 2018 – 7:30 P.M.

1. CALL TO ORDER

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

2. ROLL CALL

PRESENT: Commissioners Dumas, Gardner and Palmquist  
STAFF: City Administrator Kaltsas  
ABSENT: Administrative Assistant Horner, Chair Phillips and Commissioner Thompson  
VISITORS: Nate Pribyl and Courtney Pribyl

3. APPROVAL OF MINUTES:

- a. May 15, 2018 Planning Commission Meeting (Revised Per Comments)
- b. June 19, 2018 Planning Commission Meeting
- c. June 19, 2018 City Council Meeting Minutes (For Information Only)

**Motion by Palmquist to approve the May 15 and June 19 minutes, second by Gardner. Ayes: Dumas, Gardner and Palmquist. Nays: None. Absent: Phillips and Thompson. Abstain. None. Motion Approved.**

4. PUBLIC HEARING: Nate Pribyl and Courtney Pribyl (Applicant/Owner) requests that the City consider the following action for the property located at 5405 Lake Sarah Heights Dr. (PID No. 01-118-24-23-0011) in Independence, MN:

- a. A variance for reduced setbacks to allow the reconstruction and enlargement of the existing legal, non-conforming shed located on the subject property.

Kaltsas said the applicant experienced damage to their home and accessory building during a storm last year and determined that the existing detached accessory structure on the property needed significant repair. The applicant razed the existing structure and reconstructed the existing shed without a permit from the City stating that they were unaware that it was required to replace the existing accessory structure. The City notified the applicant this year that the new accessory structure needed to be permitted and did not meet applicable setbacks.

The previous detached accessory structure was considered a legal non-conforming structure as it did not meet applicable setbacks from the lakeshore and side yard setback line. The applicant could have reconstructed the previous structure in total as long as it was not expanded in any direction. The applicant slightly expanded the size of the previous structure and also moved the structure further away from the side property line and lake shore. The previous structure was 12' x 14' (168 SF) and the new structure is 13' x 17' (221 SF). The previous structure was located less than 1 foot (actual dimension not known) from the side property line and approximately 50 feet from the Ordinary High Water Level (OHWL) of Lake Sarah. The new shed is located 23 inches (at its closest point) from the property line and 51 feet from the OWHL

of Lake Sarah. The City can consider granting an after the fact variance for the new shed if it finds that it meets all applicable criteria of the zoning ordinance. 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 is generally consistent with similar variances granted for properties in this area.
- b. Many of the properties in this area have setbacks from the side yard or lakeshore property lines that do not meet the required setbacks.
- c. The character of the surrounding area is residential. The proposed detached accessory structure associated with a single-family home is in keeping with the City's comprehensive plan.

There are several additional items that could be considered by the City: Many of the surrounding properties have been granted relief from the requisite setback requirements due to the small size of the properties, unique lot layouts resulting from the historic nature of the structures on the properties and the change in nature of the homes from seasonal to permanent.

2. The maximum amount of impervious surface coverage permitted in this property is 25% of the total area or 6,496.75 square feet. The new shed is slightly larger than the previous shed but still fits within the total allowed impervious surface coverage. Impervious surface coverage for this property is calculated as follows:

House: 4,535 SF  
Driveway: 1,383 SF  
Deck: 252 SF  
Shed: 221 SF  
Proposed: 6,391 SF  
Permitted 6,496.75 SF

3. The adjacent property to the southeast has an existing shed that is located closer to the property line and OHWL than the subject structure. In this area of the City, there are many structures that are located closer to the property lines than required.

4. The new shed, while larger, is located further from the side yard property line and further from the OHWL than the previous structure. The applicant could have reconstructed the existing shed in the previous location in accordance with the legal non-conforming structure provisions.

5. The City would allow a water oriented accessory structure to be located no closer than 9 feet from the side yard property line and 10 feet from the OHWL. This structure could possibly qualify as a water oriented accessory structure; however, the maximum height of a water oriented accessory structure is 10 feet. This structure is approximately 12 feet in height and would be too tall. The properties on both sides of this property have an existing water oriented accessory structure.

6. The neighboring property owners that are on both sides of the subject property have submitted letters to the City stating that they do not have any issues with the new shed.

7. The shed is fairly well screened by existing trees and vegetation that further mitigate potential impacts of the shed. Ultimately the City will need to find that the aforementioned criteria for granting a variance have been met by the applicant. Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions should be considered.

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 City finds that the criteria for granting a variance have been met by the applicant and specially that:
  - a. The requested variance is consistent with the historic use of the property and fits into the character of the surrounding property.
  - b. The neighboring properties have similarly located accessory structures that mitigate the impacts of the proposed shed.
  - c. The previous shed could have been reconstructed in the current location.

3. The requested variances will allow the proposed detached accessory structure in accordance with

the approved plans only (plans will become an exhibit of the resolution). The variances granted shall be as follows:

- a. Ordinary High Water Level: 51 feet
  - b. Side Yard: 1 foot, 11 inches
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. No expansion of the detached accessory structure or impervious surface area will be permitted without additional review and approval from the City.
  6. The City Council Resolution shall be recorded with the County.

Kaltsas noted state statute trumps City Code and the new language allows a structure to be "replaced". The City interprets that as you may replace but not enlarge the structure factoring height as well into the equation.

Public Hearing Open

**Motion by Gardner to close the Public Hearing.**

Public Hearing Closed

Dumas asked if there was intent to put a water-oriented accessory structure on the property at any point. Pribyl said he did not intend to add a structure like that on his property. He noted both neighbors do have boathouses. Kaltsas said they could do something like that but would have to take something else down to comply with the 25%.

**Motion by Palmquist to approve a variance for reduced setbacks to allow the reconstruction and enlargement of the existing legal, non-conforming shed located on the subject property located at 5405 Lake Sarah Heights Dr. (PID No. 01-118-24-23-0011) in Independence, MN; second by Gardner. Ayes: Dumas, Gardner and Palmquist. Nays: None. Absent: Phillips and Thompson. Abstain. None. Motion Approved.**

9. Open/ Misc.

10. Adjourn

**Motion by Palmquist, second by Dumas to adjourn at 7:50 p.m. Ayes: Gardner, Palmquist and Dumas. Nays: None. Absent: Phillips and Thompson. Abstain: None. Motion approved.**

Respectfully Submitted,

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Trish Gronstal/ Recording Secretary