

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, SEPTEMBER 18, 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 Chair Phillips at 7:30 p.m.

2. ROLL CALL

PRESENT: Chair Phillips, Commissioners Thompson, Dumas, Gardner and Palmquist
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: None
VISITORS: GERALYN McDONALD, DOUG McDONALD, LYNDA FRANKLIN

3. APPROVAL OF MINUTES:

- a. August 21, 2018 Planning Commission Meeting
- b. September 4, 2018 City Council Meeting Minutes (For Information Only)

Motion by Gardner to approve the August 21 and September 4 minutes, second by Palmquist. Ayes: Phillips, Thompson, Gardner and Palmquist. Nays: None. Absent: None. Abstain. Dumas. Motion Approved.

4. PUBLIC HEARING: David Zoldahn (Applicant/Owner) requests that the City consider the following action for the property located at 440 Kuntz Drive in Independence, MN (PID No.s: 33-118-24-24-0001 and 33-118-24-21-0002):

- a. A minor subdivision to permit a lot line rearrangement to adjust the east/west line between the two subject parcels.

Kaltsas said the applicant is seeking a minor subdivision to allow a lot line rearrangement which would allow the north property to be expanded and the south property to be reduced. Both properties are considered buildable lots of record. Currently, the south property is approximately 22.5 acres and the north property is 2.5 acres. The applicant would like to essentially balance the properties so that the north property has more “buildable” area. The south property has the existing home and detached accessory buildings and would be 10 acres in the after condition. This would allow no restriction in the square footage allowed for detached accessory structures.

Staff has reviewed the request and offers the following information for consideration by the Planning Commission:

1. The applicant meets applicable criteria relating to the existing accessory structures located on the south parcel. In the after condition, all structures will meet requisite setbacks.
2. In the after condition, the properties will have the following frontage on a public right of way and lot width to frontage ratios:

North Property:

Required Frontage: 300 LF
Required Lot Frontage to Depth Ratio: 1:4
Proposed Frontage: 501 LF (Kuntz Drive)
1215 LF (CSAH 6)
Proposed Lot Frontage to Depth Ratio: 1:2.5

South Property:

Required: 300 LF
Required Lot Frontage to Depth Ratio: 1:4
Proposed: 322 LF (Kuntz Drive)
Proposed Lot Frontage to Depth Ratio: 1:4

3. The applicant has requested the requisite percolation test to confirm that there is a primary and secondary on-site septic site for each property. The City should have confirmation prior to final approval. The size and general make-up of the property typically support the development of a primary and secondary site.

4. Access to the north property could be from either CSAH 6 or Kuntz Drive. Access to CSAH 6 would be subject to Hennepin County approval.

5. There is adequate space on the north property to construct a residence and associated accessory buildings.

6. Both properties are lots of record and no park dedication fees are required for either existing lot.

Staff is seeking a recommendation from the Planning Commission for the requested minor subdivision to allow a lot line rearrangement with the following findings and conditions:

1. The proposed minor subdivision to allow a lot line rearrangement request meets all applicable conditions and restrictions stated Chapter V, Sections 500 and 510, Planning and Land Use Regulations and Zoning, in 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. Access to CSAH 6 will require the review and approval of Hennepin County.
4. The Applicant shall provide the legal descriptions, execute and record the requisite perimeter drainage and utility easements with the county within six (6) months of approval.
5. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Public Hearing Open

Motion by Gardner to close the Public Hearing.

Public Hearing Closed

Motion by Palmquist to approve a minor subdivision to permit a lot line rearrangement to adjust the east/west line between the two subject parcels for the property located at 440 Kuntz Drive in Independence, MN (PID No.s: 33-118-24-24-0001 and 33-118-24-21-0002) per staff recommendations; second by Gardner. Ayes: Phillips, Gardner, Thompson, Dumas and Palmquist. Nays: None. Absent: None. Abstain. None. Motion Approved.

5. **PUBLIC HEARING:** Doug and GERALYN McDonald (Applicants/Owners) request that the City consider the following action for the property located at 4976 South Lakeshore Drive in Independence, MN (PID No. 24-118-24-11-0013):
- a. A variance to allow the construction of a detached accessory building that does not meet the side yard setback from the west property line.

Kaltsas said the applicant is seeking approval to remove and replace an existing legal non-conforming detached accessory structure located on the subject property. There is an existing detached accessory structure located on the property that does not currently meet the required side yard setback from the west property line. The existing garage is located 1.5 feet from the west side property line. The required setback for detached accessory structures is nine (9) feet. The applicant would like to raise the height of the building foundation to allow proper drainage of the site to go around the building and towards the lake without inundating the structure. In addition to raising the elevation of the existing structure, the applicant would like to change the roof line of the building so that they can access the building from a door on the south elevation. The existing garage has an off-centered roof line that can be seen from the photographs attached to this report. The applicant would like to construct a standard centered gabled roof on the new garage.

Staff has had correspondence with the applicant to discuss the existing and proposed detached garages on the property. The applicant did look at rebuilding the existing shed in its current location which would be permitted by the City. Ultimately the applicant determined that they would like the City to consider granting a variance to allow a new detached accessory garage to be constructed in the same location as the existing garage with three changes:

1. Raise the finished floor elevation of the new structure so that it sits 1.5 feet above the proposed new drainage swale.
2. Change the roofline of the new structure from an offset gable roof to a center gable roof.
3. Extend the structure 3 feet to the south while maintaining the 1.5-foot side yard setback.

The proposed garage would have the following setbacks:

Side Yard Setback:

Required: 9 feet from the side yard property line

Proposed: 1.5 feet from the side yard property line (variance of 7.5 feet)

REQUIRED 9'- SETBACK EXISTING/PROPOSED

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) 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 right of way or side property lines that do not meet the required setbacks.
- c. The character of the surrounding area is residential. The proposed garage expansion for 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:

1. 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 neighboring property owner directly west that would have the most visibility of the garage has submitted a letter to the City stating that they support the requested variance.
3. The proposed garage would be very similar to the existing garage on the property.
4. The maximum impervious surface coverage for this property is .25% or 10,999 SF. The existing coverage is as follows:

House, walks, patio and deck: 4,953 SF
Driveway: 3,803 SF
Existing Garage: 575 SF
Total: 8,781 SF
- The total coverage with the existing and proposed garage (plus 60 SF) would be within the allowable impervious coverage for this property.
5. The applicant has submitted a proposed drainage plan which indicates how the drainage will be addressed on the subject property.
6. The City allows up to 1,850 square feet of detached accessory structure for this property. The existing and proposed garage is approximately 600 SF and well within the allowable structure size.

Ultimately the City will need to find that the criteria for granting a variance have been met by the applicant.

Public Comments: The City received a letter from the neighboring property owner located at 4986 South Lake Shore Dr. offering support for the request.

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 Applicant shall pay for all costs associated with the City's review of the requested variance.
3. 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 garage will be permitted without an additional variance request.

Thompson asked if the only thing that makes this request legal non-conforming are the setbacks or if there are any other items. Kaltsas said it meets all the other criteria. Gardner asked about storm sewer plans and Kaltsas said they will be running pipe along the backside of the garage.

Public Hearing Open

McDonald said they are working with the county on the storm sewer plan and the grading is in place already. The reason for the variance is that the neighbor built a shed and raised their elevation. McDonald said the county requires a certain elevation of the shed for drainage purposes.

Motion by Gardner to close the Public Hearing.

Public Hearing Closed.

Motion by Gardner to approve a variance to allow the construction of a detached accessory building that does not meet the side yard setback from the west property line for the property located at 4976 South Lakeshore Drive in Independence, MN (PID No. 24-118-24-11-0013); second by Palmquist. Ayes: Phillips, Gardner, Thompson, Dumas and Palmquist. Nays: None. Absent: None. Abstain. None. Motion Approved.

6. **PUBLIC HEARING:** To consider a text amendment to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses pertaining to small cellular wireless technology in City right of ways.

Kaltsas said the State of Minnesota adopted new regulations in 2017 pertaining to the regulation of placement of small cell technologies and distributed antennae systems (DAS) (See Example Images Below). Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall. Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an

antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower.

Historically, many cities' ordinances address large wireless tower sites, but not small cellular towers or DAS. Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit. While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district.

The City can regulate small wireless and DAS equipment in residential zoning districts by making new structures a conditional use rather than a permitted use. Based on the new legislation, the City can only regulate new equipment located in residential zoning districts and must allow new small wireless structures in all other commercial districts as a permitted use. Independence will also need to amend the City's Code of Ordinances pertaining to Rights of Way and the permitting of small cell and DAS technologies. The Rights of Way Ordinance will be reviewed and amended by action of the City Council at an upcoming meeting. The Planning Commission has the responsibility to review and recommend amendments to the Zoning and Subdivision Ordinances.

The City can now regulate small cell and DAS equipment in residential zoning districts by making the new structures a conditional use. Based on the new legislation, the City can only regulate new equipment located in residential zoning districts and must allow it in all other commercial districts as a permitted use. To ensure that the City has the most control over structures being located within City rights of way in residential zoning districts, the City would need to consider adding the following provision to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses: Subd. 90. "Small Wireless Facility," means a wireless facility that meets both of the following qualifications:

(a) Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(b) All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Subd. 91. "Wireless Support Structure," means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Chapter 5, Section 530.05, Subd. 4, Conditional Uses:

(l) New wireless support structures for small wireless facilities.

Summary:

Based on direction and discussion relating to the ordinance amendments proposed, staff will prepare a final ordinance amendment for City Council consideration and adoption.

Attachments: League Based on direction and discussion relating to the ordinance amendments proposed, staff will prepare a final ordinance amendment for City Council consideration and adoption.

Palmquist asked about rights-of-way and Kaltsas clarified that they were technically in zoning districts. He noted cities want the ability to regulate at the least the residential areas if nothing else. Kaltsas said new wireless support structures would be a conditional use.

Public Hearing Open

Lynda Franklin, 6615 Franklin Hills Rd., asked if it was Sprint or Verizon that was interested in putting these structures up. Kaltsas stated all the carriers are showing an interest. He noted small cell technology is going to continue to grow and be desirable for the carriers. Carriers need a more robust infrastructure due to data demands.

Marvin Johnson, 6325 Cty Rd. 6, stated this was not only a state issue but a federal issue as well and is a big concern for everyone.

Motion by Palmquist to close the Public Hearing.

Public Hearing Closed

Thompson stated this has a positive angle as well as this type of technology is what will enable people in the agricultural areas to access faster internet service. He noted it was more cost-effective technology than fiber but also understands the need for some control on implementation.

Motion by Thompson to approve the draft language in the text amendment to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses pertaining to small cellular wireless technology in City right of ways; second by Gardner. Ayes: Phillips, Gardner, Thompson, Dumas and Palmquist. Nays: None. Absent: None. Abstain. None. Motion Approved.

7. Open/Misc.

Kaltsas provided an update on Conditional Use Permits. He said there are approximately 90 CUP's currently. Kaltsas said Staff has worked over the last two years to weed out the CUP's that were non-compliant or no longer in use. Staff physically inspected CUP's and determined compliancy. Kaltsas said owners were notified of compliance status and many that were not compliant have been brought into compliancy by these efforts. He said there were about a dozen that were still outstanding, and they have been notified that as of November they may face revocation if there is no response. He noted CUP's are memorialized with the land and go with the land for perpetuity unless they are found to be in violation at some point and revoked.

Thompson thanked Kaltsas for the great work on this and getting it cleaned up. He asked if other cities ever put CUP's into specific categories. Kaltsas said cities do consider the number of CUP's in certain areas and some have provisions of separation of different uses.

8. Adjourn.

Motion by _____ to adjourn at _____ p.m.

Respectfully Submitted,

Trish Gronstal/ Recording Secretary