

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JULY 2, 2019 –6:30 P.M.

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 6:30 p.m.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, McCoy and Betts

ABSENT: Councilor Grotting

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

VISITORS: Shawn Bode, Gary Ostberg

4. ****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 City Council Minutes from the June 18, 2019 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 18947-18983 (last check was voided 18946).
- c. Approve Hiring of New Public Works Employee.
- d. Approval of a Non-City Assembly Permit Application for the Polo Classic to be held 8/4/2019, a Temporary Liquor License, and a Temporary Gambling Permit.

Motion by Spencer, second by McCoy to approve the Consent Agenda with the exception of item (d). Ayes: Johnson, Betts and Spencer. Nays: None. Absent: Grotting. MOTION DECLARED CARRIED.

Johnson stated that item (d) needed to be reviewed by the Chief Kroells before receiving approval.

Motion by Spencer, second by Betts to approve item (d) on Consent Agenda with the stipulation it receives it approval from Chief Kroells to meet all criteria. Ayes: Johnson, Betts and Spencer. Nays: None. Absent: Grotting. MOTION DECLARED CARRIED.

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

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Pioneer Sarah Creek Watershed Meeting in place of Baker
- Ende Retirement Celebration

Grotting attended the following meetings:

McCoy attended the following meetings:

- Ende's Retirement Celebration

Betts attended the following meetings:

- Ende's Retirement Celebration
- SLUC Conference

Johnson attended the following meetings:

- Ende's Retirement Celebration
- Christian Eicher's Eagle Scout Project Meeting
- Hennepin County Active Living Committee
- League of Minnesota Cities Conference in Duluth

Horner attended the following meetings:

- Planning Commission Meeting
- Christian Eicher's Eagle Scout Project Meeting
- Meeting with Voya Representative to onboard new employee
- Ende's Retirement Celebration

Kaltsas attended the following meetings:

- Meeting with MnDOT Consultants on Highway 12

Kaltsas introduced Shawn Bode as the new Public Works Supervisor.

Kaltsas said the City was approached by another Eagle Scout in search of a project and Spencer suggested the bridge needed to be rebuilt at Pioneer Park.

7. Katie and Brian Roers (Applicant/Owner) request that the City consider the following action for the property located at 2914 Lindgren Lane (PID No. 13-118-24-24-0006) in Independence, MN:

- a. **RESOLUTION 19-0702-01** – Considering approval of a variance to allow reduced side yard setback from the north property line to allow the construction of a new home.

Kaltsas said the subject property is located at 2914 Lindgren Lane. The property is located along the west shoreline of Lake Independence. There is an existing home and several small sheds located on the property. The property is accessed from Lindgren Lane although the property has no direct frontage on the road. The property access is gained across the City's property. The property is approximately .36 acres. This property is considered a sub-standard lot of record. Substandard lots of record in the shoreland district are allowed to have reduced setbacks of 60% of the required setbacks.

The City granted a variance for this property in 2014 allowing a 3-foot reduced side yard setback on both sides of the property. The variance granted allowed the proposed home at the time to be located 15 feet from each side property line rather than 18 feet as required. The applicant at the time decided not to move forward with building the new home and the property went back up for sale. The current applicants purchased the property last year and came forward with an application for a variance based on a revised site plan. Planning Commission reviewed the request in 2018 and recommended approval of the variance subject to working with

the adjacent property owner. The applicant asked for the application to be tabled so that they could go back and review the location of the proposed new home.

The subject property is considered a substandard lot of record in accordance with the City's Shoreland Ordinance Section 505.15.

505.15. Substandard lots. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:

- (a) such use is permitted in the zoning district;
- (b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and
- (c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.

The subject property is located off of Lindgren Lane directly adjacent to the City's former community septic drain field property. There is currently an existing home (cabin on the property). The existing home on the property is not in good condition. The property supports a maximum home width of approximately 27 feet utilizing the required setbacks. The applicant is seeking an eight (8) foot variance from the north side yard setback to support a 34-foot-wide home. The setback on the south side at its closest point is proposed to be approximately 20 feet. The applicant has prepared a general site plan which identifies the proposed home location. The proposed home would be a two-story structure. The plan shows that the proposed home would meet the requisite 60-foot lakeshore setback. In addition to the setback requirements, properties located in the shoreland district can have a maximum impervious surface coverage of 25%. This property can have a maximum coverage of 3,933.75 square feet. The proposed house and impervious site improvements have a total impervious coverage area of 3,525 square feet or 22.40% (See survey for detailed breakdown). The proposed house and site improvements would not exceed the required maximum impervious coverage allowed under the Shoreland 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. The applicant is proposing to use the property in a manner consistent with the Rural Residential District. The applicant has attempted to locate the building in order to provide a viable access to the lake side of the property. The proposed home meets or exceeds all other applicable setbacks for property zoned Rural Residential and covered by the Shoreland Overlay District.

b. This property is one of the narrowest in this particular part of the City.

c. The character of the surrounding area is residential. The proposed single-family home is in keeping with the City's comprehensive plan.

The City will need to determine if the requested variance meets the requirements for granting a variance. Several additional considerations that could be considered are as follows:

1. This lot was developed prior to the establishment of the setbacks in the current ordinance being adopted. The existing home is considerably smaller than those located on the surrounding properties.

2. Side yard setbacks vary considerably on the surrounding properties.

3. The new home will be connected to City sewer. The City has granted a new access and utility easement across that portion of the City's property currently used by the property for access. The applicant has also secured an easement from the property owner to the north to allow access to the property.

4. The property owner has worked with the adjacent property owner to the north to resolve any concerns relating to the requested variance. The Planning Commission held a public hearing and the neighboring property owners to the north and south of the property spoke in support of the requested variance. The City has not received any other comments relating to the request.

The Planning Commission held a public hearing and discussed the requested variance. Commissioners asked questions of staff. Commissioners noted that in the previous recommendation, a height limitation was considered and asked the neighboring property owner to the north if the original height concern was still relevant. The property owner to the north noted that there was no longer a concern relating to the height of the proposed new home. Commissioners noted that they were satisfied with the reviews plans and recommended approval to the City Council finding that the criteria for granting a variance had been met by the applicant.

The Planning Commission recommended approval of the requested variance with the following findings and conditions:

1. The 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 total impervious surface coverage for this property will not exceed 25% of the total lot area.
3. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
 - a. The existing lot width restricts the reasonable use of the property and does not accommodate a home similar to those in the surrounding area.
 - b. The proposed variance will provide for a reduced setback that is similar to the setback already established for properties in the surrounding neighborhood.
 - c. The narrow width of the lot was not a condition created by the current owner and has been a historical condition of the property.
4. The variance will permit an 8-foot reduction of the north side yard setback to allow the proposed site plan attached hereto as Exhibit B. The variance allows for a two story building on the subject property with both the first and second story being permitted to encroach into the side yard setback 8 feet. Any modification change 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.
5. 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 relating to grading and drainage.
6. The applicant shall pay for all costs associated with the City's review of the requested variance.
7. 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.
8. The variance approval will be valid for one year from the date of City Council approval. Construction of the new home will be required to commence prior to expiration of the variance.
9. The City Council Resolution shall be recorded with the County.

Johnson stated it was great having the neighbor to the north (Mary Fehn) in support of the variance. Spencer asked if the access issue was resolved. Kaltsas said the City granted access through the City portion and Fehn granted private access through the portion on her property.

Motion by McCoy, second by Spencer to approve RESOLUTION 19-0702-01 for a variance to allow reduced side yard setback from the north property line to allow the construction of a new home for the property located at 2914 Lindgren Lane (PID No. 13-118-24-24-0006) in Independence, MN. Ayes: Johnson, Betts and Spencer. Nays: None. Absent: Grotting. MOTION DECLARED CARRIED.

8. Gary and Lynda Ostberg (Applicants) request that the City consider the following action for the property identified by (PID No. 33-118-24-14-0003) and located at 7297 CSAH 6 in Independence, MN:
- a. **RESOLUTION 19-0702-02** – Considering approval of a conditional use permit amendment to allow the construction of a gazebo on the property that is associated with the commercial riding stable.
 - b. **RESOLUTION 19-0702-03** – Considering approval of a conditional use permit to allow a ground mounted solar system that is less than 500 SF.

Kaltsas state he property is located on the south side of CSAH 6 and just west of Game Farm Road N. The property has an existing home, a detached accessory structure (horse barn and indoor riding arena) and is comprised of open pasture, a woodland area and wetlands. The applicants received approval of a conditional use permit on the subject property to allow a commercial riding stable, associated bunkhouse and detached accessory structure larger than 5,000 SF in 2017. In 2018, the applicant asked for an amendment to the CUP to expand the commercial riding stable by adding an indoor walker building. This request was approved by the City. The applicant would now like to add a ground mounted solar system to the property as well as a small enclosed gazebo. The City generally adds a stipulation to all CUP approvals that prohibits any expansion of the existing buildings and or use associated with the commercial riding stable without an amendment to the CUP. In this case, the addition of the enclosed gazebo would be considered an expansion of the commercial riding stable and therefore subject to the City's review and approval.

The ground mounted solar system requires its own conditional use permit. In all zoning districts of the City, ground mounted solar systems are only permitted as a CUP. 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 side yard adjacent to the existing home on the property. The proposed solar system would be comprised of two separate ground mounted arrays. The total square footage of the two arrays would be 462 SF. This would be less than the 500 feet maximum SF permitted. The arrays would be setback approximately 55 feet from the north property line (side yard). The required setback is a minimum of 30 feet. The proposed ground mounted system would have a maximum height of 10 feet 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 are currently no residential structures located near the proposed location. The proximity of the proposed ground mounted system to the nearest residence and or public right of way is ~1,000 feet. The City will need to discuss whether or not additional screening should be added to the north property line. One additional consideration relating to screening is that the panels will be oriented to face south. This will help to mitigate glare and or other visual impacts to surrounding properties. The applicant has also provided the City with an updated site plan and image of the proposed gazebo. The gazebo would be located near the horse barn and would be approximately 12' x 12'. The proposed gazebo would meet all applicable setbacks.

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.

The City has discussed the proposed ground mounted solar system and enclosed gazebo with the applicant. The proposed ground mounted solar system appears to meet all applicable standards provided for in the zoning ordinance. The size of the system and its proximity to the surrounding property appears to adequately mitigate potential visual impacts. The City will need to determine if the system should be further screened from the north property line. The proposed gazebo is compatible to the existing commercial riding stable and previously granted CUP. Given the location of the property off of CSAH 6, the orientation of the buildings and their relationship to the surrounding properties, it appears that the proposed application can be found to meet the requirements for granting a conditional use permit amendment.

The Planning Commission reviewed the requested CUP and CUP Amendment and asked questions of staff. Commissioners discussed the requirement for screening the solar panels. Commissioners asked if the City had any other examples of where screening was required. Staff noted that the City has required screening for different CUP's in the past, but there have been no ground mounted solar systems installed in the City. Commissioners reviewed the proximity of the panels to the surrounding properties and structures and found that the need for screening for this particular request was not warranted. Commissioners also reviewed the proposed gazebo and found no issues with the requested amendment to add the gazebo to the property. Commissioners recommended approval of both the CUP and CUP Amendment. The Planning Commission recommended approval of the request for a conditional use permit and conditional use permit amendment 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. The conditional use permit previously granted will remain in full force and the following conditions will be added to the permit:
 - a. The conditional use permit will allow an approximate 150 SF enclosed gazebo to be located in accordance with the approve site plan attached hereto as EXHIBIT B. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
 - b. A new conditional use permit will allow a ground mounted solar system to be located on the subject property and in accordance with the approved site plan attached hereto as EXHIBIT B.
3. The ground mounted solar system shall be constructed in accordance with all applicable zoning code, building code and other relevant standards.
4. The applicant shall pay for all costs associated with the review and recording of the resolutions granting approval of the conditional use permit and conditional use permit amendment.
5. The conditional use permit and conditional use permit amendment shall be recorded with the County.

Motion by Spencer, second by McCoy to approve RESOLUTION 19-0702-02 for a conditional use permit amendment to allow the construction of a gazebo on the property that is associated with the commercial riding stable for the property identified by (PID No. 33-118-24-14-0003) and located at 7297 CSAH 6 in Independence, MN. Ayes: Johnson, Betts and Spencer. Nays: None. Absent: Grotting. MOTION DECLARED CARRIED.

Motion by Betts, second by McCoy to approve RESOLUTION 19-0702-03 for a conditional use permit to allow a ground mounted solar system that is less than 500 SF. for the property identified by (PID No. 33-118-24-14-0003) and located at 7297 CSAH 6 in Independence, MN. Ayes: Johnson, Betts and Spencer. Nays: None. Absent: Grotting. MOTION DECLARED CARRIED.

9. Discussion on Ox Yoke Sewer Repair/System Update.

- a. Review proposal and provide direction relating to the repair and update of the Ox Yoke sewer system.

Kaltsas said the system that services the Ox Yoke and a few residences near there is going to need upgrades to accommodate the restaurant and properties. Proposals have been obtained and the cost would be approximately 50k to upgrade. The owner of the Ox Yoke wonders if the cost could be assessed or if the City can assist with the cost in any way. Kaltsas said the City would continue to operate the system but maintenance would be turned over to the company (Septic Check). Kaltsas said we should see a reduction in costs. Johnson liked the shorter payback period. Vose stated the rationale makes sense as the Ox Yoke is the biggest user of the system. Johnson asked the Council if their consensus was that they approved. Kaltsas said consensus tonight is fine and he will come back with formal agreements.

10. Open/Misc.

11. Adjourn.

Motion by Betts, second by McCoy to adjourn the meeting at 7:11 p.m.

Respectfully Submitted,

Trish Gronstal/Recording Secretary