

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, APRIL 16, 2019 – 7:30 P.M.

1. Oath of Office – Robert G
2. CALL TO ORDER

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

3. ROLL CALL

PRESENT: Commissioners Thompson, Gardner, Dumas and Palmquist
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: Chair Phillips (Retired)
VISITORS: Don Hamilton

4. APPROVAL OF MINUTES:

- a. March 19, 2019 Planning Commission Meeting
- b. April 2, 2019 City Council Meeting Minutes (For Information Only)

Motion by Thompson to approve the January 15 Planning Commission Minutes, second by Palmquist. Ayes: Thompson, Gardner, Dumas and Palmquist. Nays: None. Absent: Abstain. None. Motion Approved.

5. **PUBLIC HEARING:** Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):
 - a. An interim use permit allowing the continued horticulture use of the existing property.

Kaltsas said the City has been working with the applicant for several years to better understand the existing use of the property and how it conforms to permitted and accessory uses within the RR-Rural Residential zoning district. The applicant has stated that the use of the property is for horticulture, which is a permitted use in the RR zoning district. Horticulture is defined by the City as follows:

Subd. 42. "Horticulture." The use of land for the growing or production of fruits, vegetables, flowers, cultured sod and nursery stock, including ornamental plants and trees, for the production of income.

The applicant currently operates a business which grows and produces flowers and ornamental plants for the "production of income". The applicant has noted that the plants grown on the premise are integral to and the primary use of the business known as Pleasant View Gardens, Inc. In association with the horticulture use of the property, the applicant has equipment, materials and employees. The City has been working with the applicant to understand and to address several issues relating to the horticultural use of the property. The City believes that the use of the property is more intense than the historically interpreted allowed horticulture use of similar properties. As such, it was found to be in the best interest of the City to

establish parameters relating to the existing and future use of the property for horticultural purposes. The current zoning ordinance does not fully establish conditions or criteria relating to the horticultural use of a property.

The City and applicant have agreed that consideration of an interim use permit would be the clearest way to allow the continued horticultural use of the property while establishing requirements and stipulations on several elements of the use. The applicant and the City have developed a list of significant parameters and conditions in the form of a settlement and stipulation agreement. The agreement has been considered by the City Council and approved in an effort to establish key parameters and conditions that can be considered during the review of the interim use permit application. The approval of the settlement and stipulation agreement is subject to the applicant obtaining an interim use permit for the continued use of the property for horticultural use. The City is not obligated to approve the interim use permit and shall review the application and proposal based on the established criteria in the zoning ordinance.

There are several key considerations relating to the proposed interim use permit that should be noted and further considered by the City.

1. The applicant has stated that this property has historically been used for horticultural purposes similar to the current use of the property.

2. The City regulates the total square footage of detached accessory structures on a property. The subject property would allow for a total of 3,306 SF (165,315 SF x 2%). The applicant currently has the following detached accessory structures on the property totaling 3,457 SF:

- a. Garage: 600 SF
- b. Garage #1: 270 SF
- c. Garage #2: 420 SF
- d. Barn & Lean-to: 881 SF
- e. Shed: 736 SF
- f. Lean-to: 550 SF

In addition, the applicant has the following hoop houses totaling 4,600 SF:

- a. Hoop House #1: 3,000 SF (300' x 100')
- b. Hoop House #2: 1,600 SF (20' x 80')

The square footage of detached accessory structure exceeds the allowable amount permitted on the property. All of the permanent detached buildings are existing and considered legal-nonconforming. The applicant has constructed two hoop houses (greenhouses) on the property in the last 5 years without approval from the City. The applicant has noted that they believe the structures to be temporary and considered agricultural buildings which would not require a building permit. The City does differentiate between temporary and permanent structures and the hoophouses fit into the City's current definition of accessory structures. The applicant is proposing that one of the hoop houses will be taken down for a portion of the year (see detailed condition in Exhibit A attached hereto). As a condition of the approval, the applicant would not be permitted to expand or add any additional detached accessory structures to the property without meet all applicable ordinances and obtaining the requisite approvals and permits.

3. The applicant has employees that are integral to the horticultural use of the property. The employees tend to and maintain the plants grown on the premise. The City and applicant have discussed that the employees being permitted on the premise will be limited to the growing season

from March to November. The total number of employee vehicles is limited and further detailed on the attached Exhibit A.

4. The applicant has equipment associated with the horticultural use of the property that is used to maintain the plants, move material associated with growing and tending to the plants and vehicles associated with taking the plants off site for delivery and installation. The City has discussed limiting the vehicles and equipment permitted on the property. In addition, the City has discussed allowing equipment and vehicles to be stored on a nearby property located at 1030 County Road 83. This property is owned by a relative and has an existing conditional use permit allowing employee vehicle parking associated with a construction business. The City and applicant have discussed that the vehicles and equipment stored on the premise would need to be located in designated areas and reasonably screened from public view.

5. The applicant has materials associated with the horticultural use of the property. The City and applicant have discussed that the materials would need to be located in designated areas and reasonably screened from public view.

6. The applicant has prepared a site plan which further details the existing buildings, location of proposed parking, storage of materials and existing and proposed screening. The applicant is proposing to develop a more complete landscape screen along Drake Drive and the east and west property lines. In addition, the applicant is proposing to add additional screening to the north side of the hoop houses and outdoor materials storage areas (a copy of the proposed site and landscape plan is attached to this report).

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it meets the standards for granting a conditional use permit. The following criteria have been established for both an interim use permit and conditional use permit:

- 1. The use is deemed temporary and the use conforms to the development and performance standards of the zoning regulations.*
- 2. The date or event that will terminate the use can be identified with certainty.*
- 3. Allowing the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.*
- 4. The user agrees to any conditions that the city council deems appropriate for allowing the use.*
- 5. The use meets the standards set forth in subsection 520.11 governing conditional use permits.*

The criteria 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 City will need to determine if the requested interim use permit meets all of the aforementioned conditions and restrictions. The City has worked with the applicant to develop an agreeable set of conditions and parameters to limit, and where necessary, mitigate potential impacts relating to the horticultural use of the property. It should be noted again that horticulture is a permitted use in the Rural Residential zoning district. The interim use permit will provide the City with ability to establish measures and conditions to the use of the property in order to mitigate potential impacts. It should also be noted that the City Council has determined that the zoning ordinance will be updated to ensure clarity relating to the desired intent of permitting horticulture use of a property and to more fully provide regulations of the same.

Staff and the Planning Commission have been directed to review the ordinance and develop an amendment for consideration in the near future. Staff is seeking a recommendation from the Planning Commission for the request for an interim use permit with the following findings and conditions:

1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The interim use permit will expire upon the conveyance of the property or the sale or cessation of the business (Pleasant View Gardens, Inc.), whichever occurs first.
3. The horticulture use of the property shall be subject to all conditions provided for and further detailed in the attached **Exhibit A**.
4. The applicant shall pay for all costs associated with the City's review and processing of the requested interim use permit.

Thomsen asked when the CUP would expire. Kaltsas said it would expire upon conveyance or sale of the property or sale of the business. Gardner asked if the transfer of the title would be a conveyance. Kaltsas said it would be and it is written in the agreement that it could be transferred within the family and this point will be defined even further.

Palmquist asked if the hoop structures were grandfathered in. Kaltsas said they were not.

Dumas asked about parking and if there was parking for retail sales. He said this appears to be commercial sales only. Kaltsas said the CUP is not for retail sales and parking is on the east side of County Road 83 and Drake Drive.

Gardner asked what would be parked in the shed. Kaltsas said it would be the Bobcat according to the terms written in the CUP.

Palmquist asked about additional screening. Kaltsas said additional screening is proposed involving a hedgerow which at full growth would provide significant screening.

Gardner asked if there would be a limit on the number of employees allowed for the business. Kaltsas said there is not a specific limit on employees but the number of employee vehicles is limited to six.

Public Hearing Open

Lori Fitz, 5995 Drake Dr., said she is in full support and loves the idea of the business. She said parking could be worked out.

Katherine Schmidt, Drake Dr., wants Volkenant to be able to stay in business and is in support.

Joe Timm, County Road 6., supports Volkenant and the business but also wants to express concern that he feels the City Council and Planning Commission project towards small businesses. He read part of the comp plan regarding rural feel of Independence. He said there are other people doing the same thing and felt the City went after her.

Mike Hagra, non-resident, has known Volkenant since college and went down a similar path in a business they ran in another City. He said it appears there has been a reasonable compromise. He felt that she had to jump through a lot of hoops.

Steve Timm, County Road 6, said his only concern is the parking as he has a lot of vehicles at his place and wonders if he will be singled out for cars parking at his house in the future.

Motion by Thompson to close the Public Hearing, second by Gardner.

Public Hearing Closed

Gardner said in all fairness he noted the City received letters from residents who are opposed to the small business operating within the City.

Thompson said the crux of this is Exhibit A. He does not know if he endorses the term “temporary” and may be a misstep to memorialize that here as we look at the standards of accessory structures. Gardner said in definition it is a hoop house.

Thompson said the interim use standard needs to be defined further. Kaltsas said Council could look at the recommendations and clarify Exhibit A. Thompson asked what is gained by having them take a structure up and down. Kaltsas said temporary needs to be defined in relation to temporary structures. Many cities have provisions of that sort. Kaltsas said there was discussion if both hoop houses should come down, but plants need early protection and trying to put that plastic on in the winter is prohibitive. Thompson thought the larger structure that stays up should be outlined as a permanent structure in the IUP. He said he is not in favor of calling it temporary.

Thompson asked about vehicle count. Kaltsas said it was not so much a count discussion but rather the number of vehicles coming and going. These were concerns by area of residents.

Motion by Palmquist to approve an interim use permit allowing the continued horticulture use of the existing property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006) per staff recommendations and clarification of subject #3 that the horticulture use of the property will be subject to all conditions provided in Exhibit A as well as the Settlement Agreement; second by Dumas. Ayes: Gardner, Thompson, Dumas and Palmquist. Nays: None. Absent: Phillips. Abstain. None. Motion Approved.

6. **PUBLIC HEARING:** A proposed text amendment to the City of Independence Ordinances as follows:
 - a. Chapter 5, Section 530.01, Subd. 3 Accessory Uses – Considering an amendment to the maximum height of an accessory structure. The City will discuss increasing the permitted height of detached accessory structures.

Kaltsas said staff has determined that it is possible to establish a “Review Committee” that would likely be comprised of several members of the Planning Commission and City Council to review requests for accessory structures that exceed the maximum height permitted in the zoning ordinance. Details of the “Committee” makeup are still be worked on by the City. If this route is pursued by the City, it is imperative that the City establish a clear set of standards that can be used by the committee to review a specific proposal at the “Committee” level and not require a variance. If it is determined by the “Committee” that a proposed accessory structure does not meet the criteria, a variance would be required. Staff offers the following initial criteria for consideration and discussion by the Planning Commission:

1. Accessory structure is located behind (to the rear of the principle structure). *Note: This may need to be defined or graphically illustrated in the ordinance.*
2. Accessory structure is separated by a minimum distance of 100 feet from the principle structure.
3. For lots that are less than 2.5 acres, accessory structure shall be setback a minimum of 50 feet from a side or rear property line.

It is not intended that Planning Commission will provide a recommendation relating to the information presented in this report at this meeting. In 2013 the City updated the accessory structure ordinance to establish a more proportional relationship between the amount of detached accessory structure square footage allowed on a property and the size of the property. In practice, the new ordinance has worked well and there have been no variances granted relating to the size of a detached accessory structure since the amendment. One area of the ordinance that was changed at the same time was the maximum height permitted for detached accessory structures.

The City has received concerns and comments from property owners relating to the maximum height permitted. The City has also granted two (2) variances relating to the maximum height of detached accessory structures. The general concern is that the maximum height permitted varies based on the height of the principal structure. If a resident has a single-level home, the maximum height of a detached accessory structure is limited to the single-level home height. This causes some issues for residents with larger properties that would like to have a larger detached accessory structure but have a single level home.

Staff has looked at the permitted heights of accessory structures from surrounding communities.

City Accessory Structure Comparison Table	
Jurisdiction	Height
Independence	height of principle structure
Winsted	1 story/16 feet
Delano	20 feet or height of principal***
Waconia	20 feet***
Minnetrista	height of principal structure
Mound	height of principal structure
Mayer	17 feet
Maple Plain	1 story/16 feet***
Victoria	24 feet/12 feet
Watertown	12 feet
* Cannot be located in front yard	
** Over 1,000 requires CUP	
*** Measured to Peak of roof	

It should be noted that not all communities allow as large of a detached accessory structure as the City of Independence. Staff would like to further discuss the maximum permitted height of detached accessory structures with the Planning Commission.

The City’s current ordinance states the following:

3 The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10.

In application of the ordinance over the past 5 years, the City has consistently had requests for detached accessory structures that have heights (measured to the midpoint of the roof) in the 20-25-foot range. Many of the single-level homes measure closer to 17-20 feet in height measured to the midpoint of the roof. This typically leaves single-level property owners with an issue when considering building a detached accessory structure. When the City considered the height in 2013, there was a consensus that detached accessory structures should be proportional and subordinate to the principle structure on the property. In order to help achieve the subordinate relationship, the maximum height of the detached accessory structure was limited. Due to the wide array of property size, building architecture and other factors, many of the proposed detached accessory structures do not have a significant relationship with the principle structure.

Staff is seeking Planning Commission feedback and discussion on this issue and offers the following for further consideration:

1. The City could consider establishing a maximum height in lieu of the relationship with the principle structure. This could be a two-part maximum height that establishes a minimum permitted or the height of principle structure, whichever is greater (i.e. the maximum height permitted is 25 feet or the height of the principle structure, whichever is greater).
2. The City could consider establishing a single, maximum height for all detached accessory structures (i.e. the maximum height for all detached accessory structures is _____ feet).

2. The City could consider establishing a variable scale that is proportionate to the size of the property (i.e. the maximum height permitted for detached accessory structures on properties less than 2.5 acres is ____ feet, the maximum height permitted for detached accessory structures on properties greater than 2.5 acres, but less than 10 acres is ____ feet, the maximum height permitted for detached accessory structures on properties greater than 10 acres is ____ feet).

Kaltsas said there should be some minimum base criteria that kicks it into architecture review. Palmquist said it was important to not get hung up on arbitrary criteria. Kaltsas said the ordinance was in place to create a hierarchy between principal structure and accessory buildings. Palmquist noted topography makes a difference as well as size of property.

7. Open/Misc.

Kaltsas said that Chair Phillips would be resigning due to work conflicts. City Council will work on a new appointment to fill his position.

8. Adjourn.

Motion by Thompson, second by Palmquist to adjourn at 9:20 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary