

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, AUGUST 20, 2019 – 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 Gardner at 7:30 p.m.

3. ROLL CALL

PRESENT: Commissioners Palmquist, Thompson, Gardner and Volkenant

STAFF: City Administrator Kaltsas, Administrative Assistant Horner

ABSENT: Commissioners Palmquist and Dumas

VISITORS: Lynda Franklin, Nate Sleck, Scott Ficek, Laura Dwyer, Corey Oeffling, Tyler Stevenson, Curtis Marks, Michael Sharratt,

4. APPROVAL OF MINUTES:

- a. July 16, 2019 Planning Commission Meeting
- b. July 30, 2019 City Council Meeting Minutes (For Information Only)

No quorum for minutes available. Moved to next meeting.

7. **PUBLIC HEARING:** Laura Dwyer (Applicant/Owner) requests that the City consider the following action for the properties located at 5215 and 5175 Sunset La. (PID No. 01-118-24-31-0002 and 01-118-24-42-0028) in Independence, MN:

- a. A Minor Subdivision to consider a lot line rearrangement for the properties located 5215 and 5175 Sunset Ln. The lot line rearrangement would allow for a portion of the property currently attached to 5175 Sunset Ln. to be combined with 5215 Sunset Ln.

Kaltsas said the applicant is seeking a minor subdivision to allow a lot line rearrangement that would allow the property located at 5215 Sunset Lane to capture a “strip” of land directly adjacent and currently belonging to the property located at 5175 Sunset Lane. The 30-foot-wide piece of property appears to have been attached to the 5175 Sunset property to provide access to the western portion of the property along the lakeshore. There is an existing low area between the house on 5175 Sunset Lane and the lake frontage which can restrict access to the shoreline in wet years. The subject 30-foot-wide strip of land has historically been maintained by the owners of 5215 Sunset Lane. The two property owners have worked out an agreement that would allow the property to be combined with 5215 Sunset Lane. In exchange for the sale of the property, the owners of 5215 Sunset Lane would grant an access easement back to the owners of 5175 Sunset Lane.

5215 Sunset Lane is considered a legal non-conforming lot by the City. The minimum lot size for sewered properties located in the Shoreland Overlay district is one acre. In addition, the property located at 5215 Sunset Lane received a side yard and front yard setback variance in 2017 to allow the expansion of the existing home. Should the City approve the minor subdivision, the existing home would come into conformance with the requisite side yard setback. The 5175 Sunset Lane property is a legal property. Staff has reviewed the request and offers the following information for consideration by the Planning Commission:

1. The lot line rearrangement does not appear to impact either property or create any additional non-conformities.
2. The side yard setback of the existing home on the 5215 Sunset Lane property would be conforming in the after condition.
3. Both properties are connected to City sewer.
4. The minor subdivision would clean up both properties and align with the historical use and maintenance of the properties.

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. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Palmquist asked if this would only benefit the 5175 easement that runs with the land. Kaltsas said that was correct.

Public Hearing Open

Motion by Palmquist to close the Public Hearing, second by Volkenant.

Public Hearing Closed

Gardner confirmed there no comments received by neighboring properties.

Motion by Volkenant to approve a Minor Subdivision to consider a lot line rearrangement for the properties located at 5215 and 5175 Sunset Ln. The lot line rearrangement would allow for a portion of the property currently attached to 5175 Sunset Ln. to be combined with 5215 Sunset Ln. (PID No. 01-118-24-31-0002 and 01-118-24-42-0028) in Independence, MN; second by Thompson. Ayes: Gardner, Thompson and Volkenant. Nays: None. Absent: Palmquist and Dumas. Abstain. None. Motion Approved.

8. **PUBLIC HEARING:** Sharratt Design & Company (Applicant) and Curt Marks (Owner) request that the City consider the following action for the property identified by (PID No. 28-118-24-14-0006) and located at 7220 Turner in Independence, MN:
 - a. A Conditional Use Permit and Variance to allow an accessory dwelling, an accessory structure larger than 5,000 SF and taller than the principal structure.

Kaltsas said the property owner currently has an existing home with large barn and indoor riding arena on the subject

property. The City granted a conditional use permit in 2018 to allow use of the property for a commercial riding stable. The property owner is now interested in constructing a new detached accessory structure on the property that is larger than 5,000 SF, is taller than the principle residence and houses an accessory dwelling unit.

The owner would like to construct a new detached accessory structure for personal use as a multipurpose recreation building. The proposed building would be a multi-story building comprised of approximately 6,000 SF on the first floor and 3,000 SF on the second floor. The building would have a garage, game room, accessory dwelling unit, office, kitchen and other similar and associated recreation space. All accessory structures greater than 5,000 SF require a conditional use permit. In addition to the limitation on building size, the City regulates the maximum height of detached accessory structures. The maximum height of a detached accessory structure shall not exceed the height of the principle structure. The property owner currently has an existing home with large barn and indoor riding arena on the subject property. The City granted a conditional use permit in 2018 to allow use of the property for a commercial riding stable. The property owner is now interested in constructing a new detached accessory structure on the property that is larger than 5,000 SF, is taller than the principle residence and houses an accessory dwelling unit.

The existing home on the property is two story home with a mean height of 24 feet (total height of 28). The applicant would like the City to permit the detached accessory building to have a mean height of 28 feet (total height of 36 feet). In order for the applicant to construct a building higher than that which is permitted, the City will need to consider a 4-foot 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;
- 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) 26 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 Agriculture Zoning

District. The City is currently working on revising the ordinance to provide a method for permitting detached accessory structures that exceed the height of the home.

- b. The effect of the requested variance will be somewhat mitigated as a result of the size of the property as well as its relationship to surrounding properties.
- c. The character of the surrounding area is agriculture. The proposed detached accessory building is generally, in keeping with the City's comprehensive plan.

The applicant would also like to utilize a portion of the detached accessory structure for an accessory dwelling unit. The City allows accessory dwelling units as a conditional use in the Agriculture zoning district. The intent of the ordinance was to allow for "mother-in-law" type units to be located within the principle structure or within a detached accessory building. In order to allow an accessory dwelling unit, the property owner will need to demonstrate that they meet all applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units. An accessory dwelling unit must meet the following criteria:

Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:

- (a) Physically attached to or within a single-family dwelling unit or within a detached accessory building that has a principal structure on the parcel; and the applicant is proposing to locate an accessory dwelling unit within the proposed detached accessory building.
- (b) Subordinate in size to the single-family dwelling unit; and the proposed accessory dwelling unit would be subordinate in size to the single-family dwelling unit as only a portion of the proposed detached accessory building would be used as an accessory dwelling unit.
- (c) Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door; and the proposed accessory dwelling unit would be separated from the single-family home.
- (d) Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and the proposed accessory structure would have an architectural character that is consistent with the agricultural use of the property.
- (e) The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and the principal structure has approximately 4,500 square feet of above ground space not including the basement or garage. 33% of 4,500 square feet equals 1,485 square feet. The applicant is proposing to construct approximately 1,150 square feet of accessory dwelling unit. The proposed layout of the bedrooms, bathroom and kitchen is somewhat unique due to the multi-purpose use of the detached accessory structure. The City will need to consider the proposed layout and determine if it meets the intent of the accessory dwelling unit ordinance. Historically, the City looked to establish a clear separation or distinction between the ADU and the remaining finished or unfinished space in the detached accessory structure.
- (f) Not in excess of the maximum square footage for accessory structures as permitted in this code; and there is no maximum accessory structure size for properties zoned AG-Agriculture and larger than 10 acres in overall size.
- (g) Has permanent provisions for cooking, living and sanitation; and the proposed accessory dwelling unit has permanent provisions for cooking; living and sanitation.
- (h) Has no more than 2 bedrooms; and the proposed accessory dwelling unit has one bedroom.

- (i) Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code; and the applicant is proposing that the accessory dwelling unit be occupied solely by family members.
- (j) Uses the existing on-site septic system or an approved holding tank; and the applicant will likely need to increase the size of the existing on site-septic system to accommodate the additional bedroom. The City will need to evaluate the proposed structure in more detail should the City grant approval of the ADU.
- (k) Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and the subject property cannot be further subdivided at this time due to the zoning and permitted land use.
- (l) In compliance with the adopted building code relating to all aspects of the dwelling unit. The proposed detached accessory dwelling unit will need to meet all applicable building codes. On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section. The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.

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 should consider the following issues/points during their review of the requested actions:

The City is considering amending the ordinance to provide a mechanism for allowing accessory structures that are taller than the principle structure. The property owner is proposing to develop a structure that appears to be designed to have an agricultural theme utilizing materials and colors that will be compatible with character of the area. The property owner has noted that they intend to construct a new principle structure on the property in the near future. The new principle structure will be larger than the existing home on the property and establish a better sense of proportionality between the structures on the property. The location of the proposed structure and its relationship to surrounding properties will help to mitigate the potential impact of the taller and larger detached accessory structure. In addition, there is a larger stand of existing trees that would further screen the proposed structure from surrounding properties.

The proposed accessory dwelling unit does not appear to meet the historic interpretation of the ADU ordinance. The City will need to consider how the proposed bedroom and kitchen relate to the remaining space within the detached accessory structure. There could be a concern relating to the structure being misunderstood as a second residential home as a result of the size, interior space and more traditional garage space. Typically, the City has reviewed ADU's that are fully delineated within a detached accessory structure and therefore clearly subordinate to the use of the detached accessory structure. Staff is seeking direction from the Planning Commission relating to the proposed detached accessory structure. For context and discussion, the City would allow a finished detached accessory structure with similar features to that which is proposed without the full kitchen and bedrooms. Bathrooms, recreation space, bar, etc. would all be permitted without a conditional use. The City has typically distinguished an accessory dwelling unit from an accessory structure by whether or not there are bedrooms and or a kitchen stove/oven.

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:

- a) The proposed conditional use permit and variance request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
- b) The conditional use permit will include the following conditions:
 1. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
 2. The existing accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit and possibly a variance following all applicable procedures.
 3. The accessory dwelling unit is limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code.
 - c) The 4-foot variance will allow the detached accessory building to have a maximum height of 28 feet as measured in accordance with City standards.
 - d) The Owner will be required to meet all applicable standards relating to the on-site septic system for the proposed detached accessory structure.
 - e) The applicant shall pay for all costs associated with the review and recording of the resolution.

Kaltsas noted a few public comments were submitted that were concerned with the size and interior space appearing to be more like a second home on the property. There was some concern this would be used in the future for a commercial business.

Gardner asked about the elevation difference of the roofs. The primary residence is one-story. Marks stated he spoke with several neighboring residents and they were fine with the building. He said there would be no parties and only family entertaining at the location.

Palmquist asked Kaltsas if there was a concern of the historical interpretation related to the riding stable. Kaltsas said it was not a concern. He said this application is for a new space and it would be hard to define what is the accessory dwelling unit versus the recreational space as there is no separation. Other properties that are defined have a door as a barrier separating the sides and creating the distinction. Kaltsas said there could be a baseline mechanism to be able to check against in future inspections with the CUP. Volkenant asked about proposed changes regarding height requirements. Kaltsas said language is being constructed looking at having a design committee review applications based on unique criteria.

Public Hearing Open

Marks said he spoke with the neighbors and would have them write letters of support if needed.

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

Public Hearing Closed

Motion by Thompson to approve a Conditional Use Permit and Variance to allow an accessory dwelling structure larger than 5,000 SF and taller than the principal structure with the addition of no commercial events to be allowed and applicant (Curt Marks) will provide an exhibit to the CUP box for the property identified by (PID No. 28-118-24-14-0006) and located at 7220 Turner in Independence, MN;; second by Volkenant. Ayes: Gardner, Thompson and Volkenant. Nays: None. Absent: Palmquist and Dumas. Abstain. None. Motion Approved.

9. **PUBLIC HEARING:** Gregory Hamman (Applicant/Owner) requests that the City consider the following action for the property identified by (PID No. 16-118-24-33-0002) and located at 2460 CSAH 92 N in Independence, MN:

- a. A variance to allow an accessory structure to exceed the height of the principle structure.

Kaltsas said the applicant would like to construct a detached accessory structure on the property. There is currently an existing home located on the property. The City regulates the total square footage permitted for detached accessory structures using a formula. The formula allows a property owner to construct an accessory building which does not exceed 2% of the upland square footage of the property. In this particular case the City has determined that the upland portion of the property is 2.71 acres. Based on this determination, the total allowable square footage for a detached accessory structure is 2,361 (2.71 acres -118,048 sf * .02 = 2,361).

The applicant is proposing to construct a 2,000 square foot detached accessory structure which is less than the maximum size permitted. In addition to the limitation on building size, the City regulates the maximum height of detached accessory structures. The maximum height of an accessory structure shall not exceed the height of the principle structure. 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.

The existing home on the property is a rambler with a mean height of 16 feet. The applicant would like the City to permit the detached accessory building to have a mean height of 19 feet. In order for the applicant to construct a building higher than that which is permitted, the City will need to consider a 3-foot variance. The applicant is proposing to locate the building to the east of the principle structure. The elevation of the proposed accessory building is approximately 2 feet lower than the elevation of the principle home. The applicant has noted that the

proposed detached accessory structure would be located in a manner that would limit its visibility in relation to the existing home on the property. The proposed accessory structure is proposed to meet applicable building setbacks (15-foot side yard, 40-foot rear yard setback). The applicant has noted in his narrative that the proposed detached accessory structure would have an 8/12 roof pitch versus a lower pitch. It was noted that the steeper pitch will provide a nicer aesthetic appearance.

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 City is currently working on revising the ordinance to provide a method for permitting detached accessory structures that exceed the height of the home.
- b. The effect of the requested variance will be somewhat mitigated as a result of the size of the property as well as its relationship to surrounding properties. The character of the surrounding area is agriculture. The proposed detached accessory building is generally in keeping with the City's comprehensive plan.

The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance.

Staff is seeking a recommendation from the Planning Commission for the requested Variance with the following findings and conditions:

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 3-foot variance will allow the detached accessory building to have a maximum height of 19 feet as measured in accordance with City standards.
3. The proposed building cannot be used for a commercial business or storage.
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.

Palmquist clarified the three-foot variance is the only request. Kaltsas stated that was correct.

Public Hearing Open

Nathan Sleck stated he is a neighbor at 2485 CSAH 92N and he has no problem with this request.

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

Public Hearing Closed

Motion by Thompson to approve a variance to allow an accessory structure to exceed the height of the principle structure for the property identified by (PID No. 16-118-24-33-0002) and located at 2460 CSAH 92 N in Independence, MN; second by Volkenant. Ayes: Gardner, Thompson and Volkenant. Nays: None. Absent: Palmquist and Dumas. Abstain. None. Motion Approved.

10. **(TO BE CONTINUED TO SEPTEMBER 17, 2019) 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 amendment to the existing interim use permit previously granted on the property.

Kaltsas noted this item would be continued as Volkenant would need to recuse herself from the discussion and there would not be a quorum for voting.

Motion by Thompson to continue Volkenant hearing at the September 17, 2019 meeting.

6. Open/Misc.

5. Adjourn.

Motion by Thompson, second by Volkenant to adjourn at 8:35 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary