

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, APRIL 11, 2017 –7:45 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 7:45 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Grotting, Spencer and McCoy

ABSENT: None

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

VISITORS: James Conely, Rob Sievers, Jay Lorek, Steve Burns

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 March 28, 2017 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 17047-17072. 17047 was reissued as a new check due to a vendor not cashing the check within 90 days of the initial issuance. The initial payment had been approved by the Council on 9.27.2016.
- c. RESOLUTION 17-0411-03 Approving a Change to the Vacation Time Policy.

Motion by McCoy, second by Grotting to approve the Consent Agenda. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.

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

Steve Burns asked to be put on the agenda to address a culvert issue.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Met with the Watershed Board with Joe Baker
- Delano Vigil
- Public Works Interviews
- Planning Commission Meeting
- 2040 Comp Plan Kick-off Meeting

- Emergency Management Meeting
- Citizens Police Academy Graduation
- Lake Sarah Improvement Association Spring Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbling
- Board of Review and Appeal Meeting

Grotting attended the following meetings:

- Sensible Land Use Coalition Luncheon
- Minnesota Homeland Security Disaster Training
- Citizens Police Academy Graduation
- Citizens Police Academy K9 Training
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbling

McCoy attended the following meetings:

- Highway 12 Coalition Meeting
- Speaker at Teen Challenge Event
- Presented at Orono Forensics Class
- Planning Commission Meeting
- Empty Bowls Fundraiser at Orono
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbling
- Long Lake Fire Department Pancake Breakfast

Betts attended the following meetings:

- Police Commission Meeting
- Citizens Police Academy Graduation
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbling

Johnson attended the following meetings:

- Sensible Land Use Coalition Luncheon
- Senior Community Services Board Meeting
- Citizens Academy Canine Training
- Citizens Academy Graduation
- Met with Auditors
- Met with a couple people regarding personal concerns
- Long Lake Fire Department Pancake Breakfast
- Regional Council of Mayors Meeting
- Fire Commission Meeting
- Sun Country Airlines Ceremony
- West Hennepin Chamber of Commerce Meeting
- Mediacom Open House
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbling

Horner attended the following meetings:

- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing

Kaltsas attended the following meetings:

7. JAMES AND ALISON CONELY (APPLICANT/OWNER’S) REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 4530 LAKE SARAH DRIVE SOUTH (PID NO. 02-118-24-24- 0020 IN INDEPENDENCE, MN:

- a. RESOLUTION 17-0411-01 Considering approval of a variance to allow a reduced front and side yard setback. The setback reductions would permit the construction of a third garage stall attached to the existing garage.

Spencer spoke on behalf of Kaltsas: He said the applicant is seeking approval to construct an addition (third stall) onto the existing detached garage. The garage addition would be 17 feet wide by 30 feet in length. The property is located at the intersection of Shady Beach Circle and South Lake Sarah Drive and therefore is subject to the recently adopted corner setback provisions of the ordinance. The existing garage is located on the property such that the angle prevents the addition of a third garage stall from meeting both the front yard (setback from South Lake Sarah Drive) and corner yard setbacks (setback from Shady Beach Circle).

The ability of the owner to expand the garage is limited by the current location and its proximity to the adjacent property lines. In reviewing the property, it does not appear that there is a logical alternative solution to expanding the garage in an area that meets all requisite setbacks. The proposed garage expansion would have the following setbacks:

Front Yard Setback:

Required: 85 feet from centerline or 51 feet from the ROW.

Proposed: 38 feet from the right of way (variance of 13 feet)

There are several factors to consider relating to granting a variance. The City’s ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, “practical difficulties” means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

(b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;

(c) the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that is generally consistent with similar variances granted for properties in this area.
- b. Many of the properties in this area have setbacks from the 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 across Shady Beach Circle that would have the most visibility of the garage expansion has submitted a letter to the City stating that they have no problem with the requested variance.
3. The property across Shady Beach Circle is setback 20 feet from the right of way line.
4. The property has a fairly extensive vegetative screen that would further mitigate potential impacts of the proposed garage (see pictures attached).

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

The City received a letter from the neighboring property owner located at 450 Shady Beach Circle supporting the variance request. No comments were made during the public hearing.

Planning Commissioners considered the request for a variance to allow the expansion of the existing garage. Commissioners asked if the existing screening provided adequate screening year round and would remain intact following completion of the garage addition. It was noted that the screening would remain in place following completion of the garage addition. Commissioners asked if there were any intersection visibility issues due to the existing vegetation near the intersection of Shady Beach Circle and Lake Sarah Drive South. Staff noted that they had visited the site and did not find any visibility issues resulting from the existing vegetation. Staff also stated that they were not aware of any concerns or complaints being submitted to the City recently or historically relating to the existing vegetation.

Commissioners discussed that several properties in this area have reduced setbacks from the City's right of way. Commissioners ultimately found that the criteria for granting a variance were met and recommended approval to the City Council.

The Planning Commission recommended approval of the request for a 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 variance shall allow a reduced front and corner yard setback as follows:
Front Yard Setback:
Required: 85 feet from centerline or 51 feet from the ROW
Permitted: 38 feet from the right of way (variance of 13 feet)

Corner Yard Setback:
Required: 51 feet from the ROW
Permitted: 37 feet from the right of way (variance of 14 feet)
3. 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 or right of way relating to grading and drainage.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the home/ garage or impervious areas will be permitted without an additional variance request.

Vose explained the process and that this property was not unlike other properties where

exceptions were made for additions such as this. Betts asked about the driveway. Vose noted the aerial is more current than the survey shows.

Motion by McCoy, second by Grotting to approve RESOLUTION 17-0411-01- considering approval of a variance to allow a reduced front and side yard setback. The setback reductions would permit the construction of a third garage stall attached to the existing garage. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.

7. JAY LOREK (APPLICANT/OWNER) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 990 COUNTY ROAD 92 N (PID NO. 28-118-24-33-0008) IN INDEPENDENCE, MN:

- a. A Conditional Use Permit to allow an accessory dwelling unit to be located within the existing detached accessory building on the subject property.

The property is located on the east side of County Road 92 North and south of Turner Road. The property is mostly upland and has one detached accessory building and a small shed.

Property Information: 990 County Road 92 N
Zoning: Agriculture
Comprehensive Plan: Agriculture
Acreage: 4.85 acres

Vose spoke on behalf of Kaltsas and said that several years ago, the City adopted an ordinance permitting accessory dwelling units as a conditional use in both Rural Residential and Agriculture zoning districts. The intent of the ordinance was to allow for “mother-in-law” type units to be located within the principle structure or a detached accessory building. The applicant is seeking a conditional use permit to allow an accessory dwelling unit inside of a portion of the existing detached accessory structure on the property. The detached accessory structure is currently utilized as both a garage and unfinished all-purpose space. The applicant currently houses his elderly father within his existing home. He would like to finish a portion of the detached accessory structure into a “studio” (open floor plan) type dwelling unit. The proposed unit would have a living space/bedroom, full bath and kitchen facilities. There would be a separate access into the unit from the outside. The proposed accessory structure would be used a true “mother in law” unit.

The subject property has an existing principle home and several small accessory buildings on the property. In order to allow an accessory dwelling unit, the applicant will need to demonstrate how 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 construct the accessory dwelling unit within an existing detached accessory structure.

- (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.

- (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 is existing and appears to generally complement the principle home on 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 ~1,575 square feet of above ground space not including the basement. 33% of 1,575 square feet equals 520 square feet. The applicant is proposing to construct an accessory structure which will total 513 square feet. The proposed square footage would be equal to the permitted maximum square feet.

- (f) Not in excess of the maximum square footage for accessory structures as permitted in this code; and

The maximum accessory structure size for properties zoned Agriculture is 2% of the buildable (upland) lot area. The applicant has 4.85 acres and is allowed a total accessory structure size of 4,223 SF. The existing building is approximately 2,000 SF and therefore would comply with applicable standards.

- (g) Has permanent provisions for cooking, living and sanitation; and

The applicant is proposing to construct permanent provisions for cooking; living and sanitation (see attached depiction).

- (h) Has no more than 2 bedrooms; and the applicant is proposing to have one bedroom within the accessory dwelling unit.

(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 property has an existing septic system that was designed for a four (4) bedroom home. The existing home has three (3) bedrooms. The City has reviewed the septic system and found that it is able to accommodate the proposed bedroom.

- (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 detached accessory building is a conforming structure that is currently in existence.

- (l) In compliance with the adopted building code relating to all aspects of the dwelling unit.

The proposed accessory structure will meet all applicable building codes and will be required to obtain requisite permits.

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 location of the existing accessory building and its proximity to the surrounding properties will mitigate potential impacts of converting a portion of the space into an accessory dwelling unit. The surrounding properties are similar in character and have similar sized detached accessory buildings. The accessory dwelling unit will need to meet all applicable building codes and building regulations. The applicant will be required to apply for and receive all applicable and requisite building permits.

As proposed, the accessory dwelling unit appears to meet all applicable criteria established in the zoning ordinance. In addition to the requirements for allowing an accessory dwelling unit, the City has additional criteria which need to be considered for granting a conditional use permit

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 purposes 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 conditional 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.

Consideration for the proposed conditional use permit should weigh the impact of having an accessory dwelling unit located on this property. The location of the proposed accessory dwelling unit and its compliance with all applicable setbacks appears to mitigate potential impacts resulting from the construction of the accessory dwelling unit. The City will need to consider if the accessory dwelling unit meets the requirements and criteria for granting a conditional use permit.

Should the CUP to allow an accessory dwelling unit be considered by the City, it is suggested that the following conditions be noted by the City:

- The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
- The proposed 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 following all applicable procedures.

Commissioners reviewed the request for a conditional use permit to allow an accessory dwelling unit. Commissioners asked if the existing septic system was in fact properly sized for the proposed additional bedroom. Staff noted that the system had been reviewed and found to be sized correctly to accommodate the proposed additional bedroom. Commissioners asked how the remaining space in the accessory building was going to be configured. It was noted that there is some additional finished space adjacent to the accessory dwelling unit, but there would be a clear separation between the spaces. Commissioners found that the proposed conditional use permit for an accessory dwelling unit meets all applicable criteria and recommended approval to the City Council.

The Planning Commission recommended approval of the requested conditional use permit with the following findings and conditions:

1. The proposed Conditional 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 conditional use permit is to allow an accessory dwelling unit to be located within the existing accessory structure on the property. The criteria for permitting an accessory dwelling unit shall be perpetually satisfied by the owner of the property. Any change in the use of the accessory dwelling not in compliance with the applicable criteria for the accessory dwelling unit will cause the conditional use permit to be revoked by the City.
3. The conditional use permit will be issued subject to the following items being completed:
 - a. The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
 - b. The proposed 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 following all applicable procedures.
4. The Applicant shall pay for all costs associated with the City's review of the requested conditional use permit.

Motion by Betts, second by McCoy to approve a Conditional Use Permit to allow an accessory dwelling unit to be located within the existing detached accessory building on the for the property located at 990 County Road 92 N (PID No. 28-118-24-33-0008). Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.

7. OPEN/MISCELLANEOUS

Steve Burns said on Kutz Crossing and Nelson Road there is a culvert and he wanted to know what the procedure was when this gets clogged. He said he has property has about three feet of water on it from the plugged culvert. He said there is concerned about all the frost heaves in Independence and he has a background in fixing these problems. He offered his suggestions from past experience with Canyon Township.

8. ADJOURN

Motion by Spencer, second by McCoy to adjourn at 8:23 p.m. Ayes: Johnson, Betts, McCoy, Spencer and Grotting. Nays: None. Absent:None. MOTION DECLARED CARRIED.

Respectfully Submitted,

Trish Bemmels/ Recording Secretary