

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
MONDAY, OCTOBER 10, 2011 – 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 Vice Chair Triplett at 7:30 p.m.

2. ROLL CALL

PRESENT: Vice Chair Triplett and Commissioners Gardner, Olson, and Palmquist
STAFF: Planner Kaltsas, Administrative Asst. Olson, Commission Liaison Spencer
ABSENT: Chair Phillips
VISITORS: Joseph Zimmerley, Myron Boll

3. APPROVAL OF MINUTES – SEPTEMBER 12, 2011

Motion by Olson, seconded by Gardner, to approve the minutes. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

4. PUBLIC HEARING. MYRON BOLL, OWNER OF THE PROPERTY LOCATED AT 1915 COPELAND ROAD (PID NO. 19-118-24-41-0005), REQUESTS AN AMENDMENT TO THE CONDITIONAL USE PERMIT TO CONTINUE TO ALLOW STORAGE OF BOATS IN THE EXISTING AGRICULTURE BUILDING LOCATED ON THE SUBJECT PROPERTY.

Kaltsas reported on the site. He stated that the applicant is looking for an amendment to the current CUP to continue to allow commercial indoor storage in existing farm buildings. He stated that there is no primary residence on the property. However, there has been a history of this use by previous owners. Kaltsas described past litigation with the previous owner that resulted in a judgment placing a 10 year sunset on the CUP. He reported that since that time, they property has brought into compliance and is in good standing. He stated that even though there is no residence on the property to comply with the provisions set in the ordinance; the Planning Commission may approve the CUP based on historical use of the property to store boats. He stated that if the CUP is approved, it will remove the sunset clause and would be memorialized to run with the property.

Palmquist stated there is a suggested condition from staff that the CUP be reviewed annually and he inquired about that process. Kaltsas replied that it is done on a fairly annual basis and it is the City that initiates the process by inspecting and verifying that the use is still there. If it is not, the City will send out letters to the owners asking to remove the CUP by resolution.

Kaltsas reported no comments were received regarding the proposal.

Public Hearing

Vice Chair Triplett opened the public hearing. No one was present to speak at the hearing.

Motion by Gardner, seconded by Olson, to close the public hearing. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

Triplett inquired how many boats can be stored in the facility. Boll responded it is about 50 boats.

Palmquist reviewed the petition submitted by Boll and was pleased that Boll had gone to the neighbors to seek their approval.

Gardner has some concerns that there is not a residence at the property and would also like to see some business hours approved for the dropping and picking up of boats. He asked Boll if 9:00 a.m. to 6 p.m. would be acceptable. Boll stated that it would.

Motion made by Palmquist, seconded by Gardner, to recommend approval of the request for an amendment to the Conditional Use Permit with the following findings and conditions:

- 1. The proposed Conditional Use Permit request meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.**
- 2. The Conditional Use Permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.**
- 3. There should be no outdoor storage permitted on the property.**
- 4. Any modifications and additions to the structures on the property will be reviewed by the City's Building Official and will be subject to all applicable standards and requirements.**
- 5. The additional uses proposed should not create an increase (beyond that of the existing farm operations) in noise or offensive odors, fumes dust, or vibrations for the surrounding properties.**
- 6. Hours of operation, specifically, the hours that the applicant schedules the drop-off and pick-up of boats and vehicles shall be 9 a.m. to 6 p.m. daily so as to not impact the use or enjoyment of the surrounding properties.**

Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

5. PUBLIC HEARING. JOSEPH M ZIMMERLEY, REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 7914 COUNTY ROAD:

- A proposed text amendment to City of Independence Zoning Ordinance pertaining to Section 530.01, Subd. 4 Conditional Uses in the Agriculture Zoning District. The proposed text amendment would add Catering Business as a Conditional Use.
- A Conditional Use Permit to allow a proposed catering business to operate from the subject property.

Kaltsas reported the applicant is looking to purchase the property at 7914 County Rd 6 to operate a catering business.

Kaltsas reported the property had two previous CUP's – one for welding and one for a chiropractic office. Staff did not feel the CUP could be amended because it is such a different use from the original CUP. In order to allow a catering business as a conditional use, the Zoning Ordinance must be amended. He stated it is not abnormal to put such a specific use as a conditional use.

Kaltsas reported the applicant is proposing to remodel a portion of the garage into a commercial kitchen and the remainder will house the delivery van. The site will also consist of 2-3 on-site employees who will rent the home. There will be no commercial deliveries and the type of event they cater are small dinner parties (20-30 people). Kaltsas reported that there are no issues with meeting the requirements but staff does have some recommended conditions:

1. the business is subordinate to the principal use of the property as a residence.
2. no materials, equipment or parts used in the business may be stored on the premises other than within the dwelling unit or accessory structure;
3. no signs relating to the business may be visible from the exterior of the dwelling unit or accessory structure except signs that are permitted under subsection 550.09, subdivision 2 of this zoning ordinance;
4. no exterior alterations may be made to the dwelling unit to accommodate the business except those alterations customarily found with the dwelling units on lots of similar size within the district;
5. no traffic shall be generated by the business beyond which is reasonable and normal for the area in which it is located;
6. the hours and days during which the business is conducted on the premises is limited so as to not unreasonable interfere with the residential character of the of the surrounding areas
7. no over the counter retail sales may occur on-site;

These conditions will ensure the property remains residential in nature.

Kaltsas reported the on-site septic is non-compliant because of lack of separation and bottomless tank. The City had granted a two year period from date of sale to become compliant. The commission discussed the possibility of requiring the septic to reach compliance within a one year time frame. Olson stated that it may not be possible for the secondary septic site to be compliant because at the time that was drawn there were only 3 bedrooms instead of 5 bedrooms. Gardner was concerned that if they can't meet septic compliance, they will not be able to run the catering business. Spencer stated a compliant septic has been designed, but will need a variance for side yard setbacks.

Public Hearing

Triplett opened the public hearing. No one was present to speak at the hearing.

Motion made by Gardner, seconded by Olson, to close the public hearing. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

Gardner asked Zimmerley if he will be living at the property. Zimmerley responded that he would be renting the rest of the house to on-site staff. Gardner then asked if he would rent to anyone other than on-site staff. Zimmerley responded that for the business to succeed, he needs to have staff there at all hours. His business plan is not feasible if on-site staff do not reside there.

Palmquist asked Zimmerley about his timeframe. Zimmerley replied that his first concern is getting the septic up to compliance, then the plumbing and flooring and eventually purchasing the equipment. He would like to be operating in May or June.

Palmquist inquired about the variance needed for the septic system. Kaltsas replied that an administrative variance can be done. Palmquist wanted to make sure the system was compliant before the CO is issued.

Triplett inquired what hours the business will have. Zimmerley replied that the hours vary greatly. Many times the events do not get out until late evening and with staff needing to clean up after the event, they sometimes get in at midnight or 1 a.m.

Triplett inquired if a CUP property can be sublet. Kaltsas replied that it can but it must follow the same use; in this case it would be a catering business.

Gardner voiced his concerns about the different nature of this CUP as it will not be the owner occupying the residence.

Palmquist stated he felt the scope of business was not adverse. He asked Zimmerley what he plans to do if the business is very successful and needs to expand. Zimmerley replied that it is not like a restaurant where you can add more tables, he and his staff can only handle one event a day/night. He of course wants to see his business successful. Kaltsas stated that expansion is limited for Zimmerley based on the conditions proposed. If he needed to expand or there was an intensification of the use, Zimmerley would need to come before the Planning Commission again for a non-conforming variance.

Motion by Olson, seconded by Gardner, to recommend approval of a text amendment to the City's Zoning Ordinance to permit Catering Business as a conditional Use Permit with the A-Agriculture Zoning District. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

Zimmerley requested clarification on exterior storage, he asked if his ventilation hood for the kitchen equipment would violate the exterior storage condition. Kaltsas replied it would not. Zimmerley stated that he will be adding extra insulation in the kitchen to help reduce noise. Zimmerley also had questions about the type of signage that can be used. Kaltsas stated that he would be bound to residential type signs, but he could request a variance.

Zimmerley had concerns about receiving neighbor complaints, specifically on the late hours the van may be returning to premises. Gardner stated that it best to get along with the surrounding neighbors and be responsible in the amount of noise made. Kaltsas stated that if there were complaints made, the City would issue a clean up or correct notice. If the complaint is not rectified with that, there may be hearing at the City level. He stated this is not a frequent occurrence.

Gardner asked about trash service. Zimmerley responded that he did not anticipate more than a residential style container. He does not see the need for a large dumpster.

The Commission discussed the timeline for the on-site septic system. Kaltsas stated the CUP could be contingent on the completion of the final Certificate of Occupancy or within one year of the sale of the property. The commission agreed with that condition.

Motion made by Olson, seconded by Gardner, to recommend approval of a Conditional Use Permit to permit a catering business to operate at 7914 County Rd 6 with the following conditions:

- 1. any modifications to the structure or intensification of the use will be reviewed by the City and will be subject to all applicable standards and requirements.**
- 2. the CUP will be contingent on the installation of a new septic system prior to the completion of the final Certificate of Occupancy or within one year of the sale of the property**

Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

6. DISCUSSION ON A PROPOSED TEXT AMENDMENT TO THE CITY OF INDEPENDENCE ZONING ORDINANCE PERTAINING TO SECTION 515.07, NON-CONFORMING USES.

Kaltsas reported that originally he had also planned to bring discussion of accessory dwelling units, or guest rental/mother-in-law apartments, but he received comments from Council and staff after the last Planning Commission meeting and will need more time to incorporate those comments.

Kaltsas reported the language in the Zoning Ordinance does not match the language in the State Statute. The City's Code can be interpreted to allow a non-conforming use to be continued, but not expanded. It is the City Attorney's opinion the language be changed to match the State. The State language allows cities to grant an expansion by variance. He stated this is a policy question for the Planning Commission and City Council.

Olson asked if the City Code is more restrictive than what the State Statute requires. Kaltsas replied that State language requires cities to allow a non-conforming use expansion so long as the use isn't intensified. The current City Code language prevents total replacement or improvement that would expand a non-conforming use.

Kaltsas replied the State language leaves it open to how the cities can provide the allowance of a non-conforming use expansion. Gardner stated that it could be allowed by building permit, but that would leave it in-house. Gardner stated the City would need to adopt the State's language in case they ever got sued. Kaltsas stated that variances are good tools for cities to use.

Palmquist felt they should be consistent with the State Statute.

Motion by Gardner, seconded by Olson, to recommend inclusion of language into the City Code to allow expansion by variance. Ayes: Gardner, Olson, Palmquist, and Triplett. None: None. Absent: Phillips. MOTION DECLARED CARRIED.

7. Open/Misc.

Gardner asked that City Council minutes be included in their packets each month. Kaltsas replied staff would see to that.

8. ADJOURN

Motion by Olson, seconded by Gardner, to adjourn the Planning Commission meeting at 8:57 p.m. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

Respectfully submitted

Kimberly A. Olson, Recording Secretary