| Chair:       | Stephanie Yendell |
| Vice-Chair: | Angela DesMarais   |
| Commissioners: | Jason Frankot  |
|             | Tim Felton         |
|             | Justin Humenik     |
|             | Ruth Krueger       |
|             | Matthew Thompson   |

**City of South St. Paul**  
**Planning Commission Agenda**  
Wednesday, July 8, 2020  
7:00 p.m.

Please be advised that the regular meeting location is City Hall Council Chambers located at 125 3rd Ave. N., South St. Paul, but pursuant to Minn. Stat. 13D.021, under the current emergency declaration due to the COVID-19 health pandemic, some or all of the Planning Commission members may participate in remote locations using WebEx. Please be advised that City Hall is closed to the public, therefore, any member of the public wishing to monitor the meeting or participate in the public hearings may do so electronically by logging in as follows:

**WebEx Meeting**  
**For the Public**  
Join by phone: 1-312-535-8110  
Access Code: 133 018 1037#

Members of the public wishing to participate in the meeting with video should email City Planner Michael Healy at least two (2) hours prior to the meeting to request a link to the WebEx meeting. He can be reached at mhealy@southstpaul.org.

**Roll Call**

1. **Agenda**

2. **Minutes**
   A. June 3, 2020

3. **New Business**
   None

4. **Public Hearings**
   A. Public Hearing for a front yard setback variance for a proposed home addition at 2324 Florance Lane.
   B. Public Hearing for a proposed ordinance repealing and replacing the City's nonconformity ordinance to align with State Statutes.
   C. Public Hearing for a proposed ordinance amendment establishing a new solar energy ordinance

5. **Other Business**
   None

6. **Adjournment**

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**Next Planning Commission Meeting:** August 5, 2020

This meeting is being taped by Town Square Television (NDC4): phone: 651-451-7834  web: www.townsquare.tv  
Replays can be viewed on Government Channel 19 on the Thursday following the meeting at 1:00 p.m. & 7:00 p.m.
MEETING CALLED TO ORDER BY CHAIR YENDELL AT 7:00 P.M.

Present: Angela DesMarais
         Tim Felton
         Jason Frankot
         Justin Humenik
         Ruth Krueger
         Matthew Thompson
         Stephanie Yendell
         Michael Healy, City Planner

Absent: None

1) APPROVAL OF AGENDA –

2) APPROVAL OF MINUTES – May 6, 2020 – Motion to approve the minutes as presented – Felton/DesMarais (7-0).

3) NEW BUSINESS

   None.

4) PUBLIC HEARINGS


Mr. Healy presented the proposed rezoning at 1003 15th Avenue from R-1: Single Family Residential District to R-2: Single-and-Two Family Residence District. The applicant is proposing to rezone the property because he wishes to convert his single-family home into a duplex in the near or distant future if the rezoning is approved. This application is solely for the rezoning of the property, not for the conversion of the property into a duplex.

The subject property is a border property between the R-1 district and R-2 district. The properties to the north and west of the subject property are zoned R-1. The properties to the west and south of the subject property are zoned R-2. The subject property meets the lot size and width requirements of an R-2 property.

There is language in the 2030 and 2040 comprehensive plans which would support the approval or the denial of the proposed rezoning. In support of the rezoning is the fact that the subject property would still be considered low density residential, that both the 2030 and 2040 comprehensive plans promote the need for diverse housing types, and the 2040 Comprehensive Plan encourages the City to revise the City’s zoning code to allow for the construction of diverse housing types. In support of the denial of the rezoning is the emphasis on encouraging different forms of housing including “move-up” single family housing. The City has long tried to encourage “move-up” single family housing to keep residents from leaving for other suburbs to find this kind of housing. If the subject property were to be rezoned to allow the property to be converted into a duplex, the property would no longer be considered a “move-up” single family property.
Mr. Healy stated that the approval or denial of this case was a judgement call for the Planning Commission. The language in the comprehensive plan supports both the approval and denial of the rezoning. Mr. Healy stated the commissioners should consider the following in their decision making:

- Does the rezoning comply with the comprehensive plan? Yes or No? Why?
- Will the rezoning be detrimental to surrounding properties? Yes or No? Why?
- Does the rezoning endanger public health, safety, or welfare? Yes or No? Why?

Commissioner Felton asked what would prevent border properties from continually changing their zoning. Mr. Healy explained that cities have two kinds of actions they can take when it comes to land use applications: a legislative action or a quasi-judicial action. In the case of Quasi-judicial actions, the roles of the Planning Commission and the City Council are clearly stated in the code. These bodies must narrowly interpret the existing code and deny a land use application if it does not meet the code. Variances and conditional use permits are common land use applications where a quasi-judicial action is taken. A rezoning is a legislative action. As lawmakers, the City Council gets to decide where the border is.

Commissioner Felton stated he believes that the biggest factor to consider is how the individuals in the neighborhood see the neighborhood developing.

Commissioner Thompson asked how long the properties to the west of the subject property had been zoned R-2. Mr. Healy stated that the zoning for the neighborhood had been the same since the 1980s.

The applicant, John-Paul Pineiro, spoke on his rezoning request. Mr. Pineiro stated that he met all of the requirement for the rezoning but that he unshod that this item is judgement call by the Planning Commission and the City Council. Mr. Pineiro stated that he was willing to answer any questions from him neighbors.

Chair Yendell opened the public hearing.

Chair Yendell asked for a summary of the correspondence Mr. Healy had received related to the item.

Mr. Healy shared that he had received a number of emails on the item. Four of the residents that had reached out to him had requested their comments be on record.

Mr. Healy stated he had received an email from David Gerson who lives at 1035 Summit Avenue on May 24th. Mr. Gerson is opposed to the rezoning request. Mr. Gerson purchased his home because of the fabric of the neighborhood which he stated is maintained by the existing zoning requirements. Mr. Gerson stated that he feels the rezoning will negatively impact his enjoyment of the property and that the rezoning will change the fabric of the neighborhood. He felt that the rezoning may decrease his property value and that of his neighbors. Allowing the rezoning might increase the property value of the requester but it will be at the cost of lowering the property value of neighboring properties. Mr. Gerson stated he was very opposed to the rezoning and would request that the application is denied.

Mr. Healy stated that on May 25th, he received an email from Michael & Nancy Leitch who reside at 1015 16th Avenue North. Mr. and Mrs. Leitch stated that they would not be able to attend the public hearing but wished to express their concern. Mr. and Mrs. Leitch shared that they have lived at their residence for over 50 years. There are currently two duplexes across the street that were built before they moved to the neighborhood. Mr. and Mrs. Leitch stated that when the owners lived in the duplexes and rented out the other apartment, “all was good.” When the duplexes were owned by absentee landlords, they experienced difficulties. There were a number of police calls because of parties, problems with tenants, parking, burning in the yards, renting the property as
Mr. and Mrs. Leitch stated that because of their experiences over the last 50 years, they would not support changing the zoning, even if the request is for an owner-occupied duplex.

Mr. Healy stated that on May 27th, he received an email from Christine and Mark Tufte who live at 957 16th Avenue North. Mr. and Mrs. Tufte stated that as the long-term owners of their property, they disagree with the request to turn the subject property into a duplex. The applicant is not a long-term homeowner and has lived at the house for less than a year. Mr. and Mrs. Tufte stated that the duplex at 1000 16th Avenue North has always been an eyesore with too many cars, vans, trucks, and boats. Mr. and Mrs. Tufte stated they believe that long term homeowners improve and maintain the neighborhood and the proposed rezoning would make the neighborhood slip.

Mr. Healy received another email from a resident that was present at the meeting. Mr. Healy shared that he received comments on May 28th from Jeremiah and Kathy Olson who reside at 1035 15th Avenue North. Mr. and Mrs. Olson shared that the former owner of 1003 15th Avenue North took create care to return the property to its original style. The property had great historical value and should be retained as is. Mr. and Mrs. Olson have lived at their home for 30 year and have put great effort into restoring their home. They wish to preserve and improve the historic neighborhood. They feel that most people in the neighborhood are doing the same, however there are a couple cases where things had gone in the opposite direction. They state that there have been problems with the existing duplex in terms of vehicles, parties, and police calls. They requested in the interest of stabilizing the neighborhood that the zoning of the subject property not be changed. Mr. and Mrs. Olson sent a second email stating they believe the subject property would require massive and expensive modifications to alter the structure to accommodate a duplex. This would destroy the look of the historic home and neighbors are opposed to having more rental properties on the block.

Chair Yendell set a maximum time limit of three minutes for individuals that wished to speak on the item. Chair Yendell designated Mr. Healy as the time keeper.

Jeremiah Olson, 1035 15th Avenue North, stated that he agreed with all of the other public comments received. Mr. Olson stated that as he walked around the neighborhood, he had found more people that would like to see the property stay as a single-family home. Mr. Olson shared his concerns with the activities at the duplexes at 1000 16th Avenue North and 1507 Hawley Avenue. Mr. Olson stated the character of the neighborhood is important and that he is opposed to any change.

Susan Hansen, 1007 15th Avenue North, stated that she has lived at her property for 16 years. Mrs. Hansen stated she is not in support of the rezoning. 15th Avenue North does not have any rental properties so this would be a significant change for this street. Mrs. Hansen stated that having a duplex next to her property would reduce her property value. Mrs. Hansen stated that she worries about the precedent that would be set if this rezoning were approved because it would be easier for other historic buildings to be converted into duplexes. Mrs. Hansen requested that the property not be rezoned.

Lisa and Anthony Wrobel, 1017 15th Avenue North, stated that they have lived at their property for 17 years. Mrs. Wrobel shared that her and her husband purchased their property specifically for its location and lot size. Mrs. Wrobel stated that she wishes the subject property to not be rezoned because it would reduce the value of the neighboring properties when many of the neighbors had put a lot of time and money into their property.

Mr. Pineiro stated that he appreciated the comments and concerns that had been shared. He stated that he had added a bedroom in the basement but that no additional changes would need to be made to the property. Mr. Pineiro stated that he intends to be in the neighborhood for a long time and would be very selective on who he
Chair Yendell closed the public hearing.

Commissioner Frankot asked the property owner how many people he intended to have in the house. Mr. Pineiro stated that he would want one additional tenant. Commissioner Frankot asked about access to the lower level of the house. Mr. Pineiro stated that the property had a common entry way with two lockable doors: one that goes to the basement and another that leads to the kitchen and the rest of the house.

Commissioner Krueger stated these types of homes are integral to the character of South St. Paul. She stated the argument that the current owner is making substantiates the concerns of neighbors. Commissioner Krueger reminded the commissioners that if the zoning of the property was changed, the changes would stay with the property beyond the current owner. Commissioner Krueger stated that to preserving the neighborhood as it is would require more than assurance from the current owner.

Commissioner Felton stated he agrees with Commissioner Krueger and that he was opposed to the request.

Mr. Healy shared that there is no prohibition from renting out a single-family home. The City allows each dwelling unit to be rented to up to three unrelated adults.

Commissioner Krueger commented that the rezoning of the property would comply with the comprehensive plan but that the denial is also supportable because the property is a move-up home. Commissioner Krueger stated that the surrounding property owners had made the case that the rezoning would be detrimental. Commissioner Krueger stated the rezoning may endanger the public safety of those in the neighborhood.

Mr. Healy provided clarification that in order to recommend denial, the commissioners would only need to state that one of the three review criteria was not met.

Commissioner Thompson asked if the 2040 Comprehensive Plan emphasized move-up housing in the manner that the 2030 Comprehensive Plan did. Mr. Healy stated that the 2040 Comprehensive Plan talks about promoting a diverse housing stock. Mr. Healy reminded the commissioners that the policy guidance found in the Comprehensive Plan is not set in stone the same way that the Future Land Use map is.

Chair Yendell summarized that while the Comprehensive Plan does not come out strong one way or another, there was a lot of concern amongst the neighbors that the rezoning would be detrimental to the surrounding properties and that the concerns are about a future owner, not the current owner.

Commissioner Huminek stated that the wording found in that the Comprehensive Plan was strongly in favor of having move-up housing.

Motion to deny the proposed rezoning of 1003 15th Avenue North from R-1 to R-2 because the rezoning would be detrimental to the surrounding properties and would be inconsistent with the Comprehensive Plan which specifically calls out a need for move up housing - Kruger/ Thompson (6-1).

B) Zoning Application submitted by AVM Group LLC related to a proposed industrial development at 121 Hardman Court.
Mr. Healy presented the staff report regarding the proposed zoning application by the AVM Group for the property at 121 Hardman Court. 121 Hardman Court is currently owned by the City’s Economic Development Authority. AVM group is seeking to develop the property and has requested 4 zoning approvals: a site plan review for a 21,200 square foot office/warehouse building, a conditional use permit for exterior storage, a variance to allow for more than 30% lot coverage by impervious surface in the Shorelands Overlay district and a variance to waive the requirement that parking lots over 3,000 square feet must include landscaped parking islands.

The subject property is located in the BridgePoint Industrial Park, off of Hardman Avenue South. The property is zoned Light Industrial. Offices and warehousing are permitted uses in the light industrial district. Exterior storage is a conditional use in the district. The property is also located within the Shorelands Overlay district and the Mississippi River Corridor overlay district. The Comprehensive Plan includes information about the Critical Area Plan which encompasses the Mississippi River Corridor overlay district. The subject property is designated to be preserved as urban mixed used. The goal for properties with this designation is to continue to allow institutional commercial and industrial uses to exist without negatively impacting the public river corridor views or harming the bluffs and floodplains.

The applicant has proposed a 21,200 square foot office warehouse with 4 suites. The applicant would occupy one of the suites and rent out the other three. The applicant has also proposed 11,610 square feet of exterior storage at the southern end of the lot. The exterior storage is proposed to be screened with berms and trees. This area would store construction equipment that is up to 15 feet in height.

The proposed site plan met the architecture, floor area ratio, lot coverage, minimum height, parking, and setback requirements. The only requirement the property does not meet is the impervious surface coverage requirement. The property has proposed 75% impervious coverage whereas the maximum allowed impervious surface coverage in the shorelands overlay district is 30%. This would require a variance. The proposed site plan met most of the landscaping standards. The plan would need to be revised to confirm to the requirements of the Mississippi River Corridor. Staff would also need a revised lighting plan and a signage plan before any signage could be added.

The applicant requested two independent variances: an impervious surface coverage variance and a parking lot island variance. Staff recommended tying the impervious surface coverage variance to the preservation of the trees on the property.

Mr. Healy reviewed the standards for exterior storage related to the proposed development. Mr. Healy brought up that most cities required that an escrow to be collected for 125% of the landscaping costs and that he recommended that be done here. Mr. Healy pointed out that based on the current screening plan, many of the items that would be stored outside would be visible above the top of the trees for the first couple years. Staff recommended that the Conditional Use Permit be approved with the condition that the site plan and screening plan must be revised with the final plans subject to approval by Staff.

Mr. Healy reviewed the comments from the City Engineer.

Staff recommended approval of the site plan, the variance for impervious surface coverage and the conditional use permit with conditions.

Chair Yendell asked for clarification if discussion was needed for the conditional use permit and the variances. Mr. Healy stated that this was the case and further explained the discussion that was needed.
Chair Yendell asked if the City was in receipt of any correspondence on the item. Mr. Healy stated he was not.
Chair Yendell asked if corresponded had been received from Mr. Rogosheske of Rogosheske, Rogoshke & Atkins, whose property sits adjacent to the subject property.

Mr. Garcia, Economic and Community Development Director, shared that the Economic Development Authority (EDA) had a discussion with Mr. Rogosheske about the site plans for the subject property. Mr. Garcia stated that Mr. Rogosheske did not have any additional comments.

Commissioner Krueger shared her concerns about the discrepancy between the proposed impervious surface coverage amount and the allowable impervious surface coverage amount. Commissioner Krueger asked if the dry pond on the property would be able to handle the water that would be displaced by the impervious surface.

Mr. Garcia explained that the stormwater pond at the subject property would need to be designed to meet the City’s stormwater standards for the subject property and the parcel adjacent to the subject property. Mr. Garcia shared with the commissioners that S&S Tree, located directly south of the subject property, sits with 79% impervious surface coverage. Mr. Garcia also stated that Rogosheske, Rogoshke & Atkins, located north of the subject property, has about 35% impervious surface coverage. Cobra Transportation, 235 Hardman Avenue South, is not in the shorelands district but does have 75% impervious surface coverage. Mr. Garcia stated that this request was not inconsistent with other developments in the Bridgepoint Business Park.

Mr. Healy shared that going forward staff planned to add the Shorelands Overlay District to city’s zoning map and to work with the Department of Natural Resources to update the shorelands district ordinance.

The applicant, Andy Briggs, shared with the Planning Commission that the trees located on the east side of the property would not be removed.

Chair Yendell opened the public hearing.

No correspondence had been received on the item nor was anyone present to speak on the item.

Chair Yendell closed the public hearing.

Commissioner Huminek stated that he found the impervious surface variance to be necessary for the project.

Chair Yendell stated that she did not find a strong justification for the parking island variance.

Commissioner Felton stated that he could not determine the intent of the parking island requirement and would defer to the Council for them to decide what the intention of the ordinance was.

Commissioner Thompson asked if the parking island requirement had been waived for other developments in the area. Mr. Healy responded that this requirement may have been waived for other industrial developments if the development had been done as a Planned Unit Development.

Commissioner Huminek stated that he did not find it necessary to have parking islands when there were only two rows of parking proposed for the property.

The commissioners discussed screening and the intention of the parking island requirement.
Mr. Healy recommended the commissioner vote on the parking island variance separately to keep the item moving.

The commissioners discussed the screening requirements for the property. Commissioner Huminek stated he was in favor of coniferous trees being placed no more than 15 feet apart “on center”.

Commissioner Krueger requested assurance that the trees on the east side of the property would be preserved. Mr. Healy confirmed that preserving the trees on the east side of the property was a condition of approval for the item.

Commissioner Thompson asked for confirmation that staff had the trees preservation requirement in writing. Mr. Healy confirmed that it was a condition of approval for the project.

Motion to approve the site plan, conditional use permit, lot coverage variance and parking island variance with the conditions as stated – Felton/ Krueger – (7-0)

5) OTHER BUSINESS

A) Annual Planning Commission Report

Mr. Healy introduced the Annual Planning Commission Report.

B) Other

Mr. Healy shared that staff had been extremely busy with permitting activities and COVID-19 related zoning updates. In the week prior to that evening’s meeting, the City Council approved an interim policy to allow restaurants to set up outside until November. This policy would allow businesses to use their parking lots for outdoor seating. Two business had already applied for this program.

6) ADJOURNMENT

Motion to adjourn- Thompson/ DesMarais (7-0).
ACTION REQUESTED
A motion recommending approval or denial of a 6-foot front yard setback variance for a home addition at 2324 Florance Lane

BACKGROUND/ DISCUSSION

Application

The Applicants, Joseph and Ashlee Gobley, are requesting the following:

1. A 6-foot front yard setback variance for a proposed addition onto the front of their home at 2324 Florance Lane.

Review Timeline

Application Submittal: June 4, 2020
Planning Commission: July 8, 2020
City Council Meeting: July 20, 2020
60-Day Review Deadline: August 3, 2020

Background

The Applicants are seeking to build an addition onto their home. The Applicants’ existing home is categorized by the tax assessor as being a 1,240 square foot one-story home with a partially finished basement and a basement level tuck-under one-car garage. The house sits on a medium-sized hill and both the basement level and main living level are visible from the street which gives the home the appearance of being a two-story home. The Applicants have indicated that their existing driveway has a roughly 14% slope (which is considered steep) and that their family has issues with safety during the winter as vehicles have slid down the driveway into the street. In addition to wanting a safer driveway, the Applicants also want a larger garage. Because of the topography of the property, the Applicants have expressed that they are unable to build a larger garage in the back yard which is the only place they could do so while meeting setback requirements.
The Applicants are seeking to construct a roughly 900 square-foot two-story addition onto the front of their single-family home. The proposed home addition would include an attached 25-foot deep 3-car garage and an entry area which would be at the “basement level” with living quarters above it. The old garage would be converted into a bedroom. The Applicants have indicated that the floor of the new garage will be 4 to 5 feet below the existing basement floor. This will allow for a new driveway that is much less steep and should be safer to use during the winter. The old driveway will be removed as part of the construction project.

Front yard setback requirements in residential neighborhoods in South St. Paul are based on the existing setbacks of neighboring houses. Based on the setbacks of existing houses on the same block as the subject property, the proposed addition will not comply with front yard setback requirements and cannot be built without a 6-foot setback variance. The Applicants have indicated that it is not possible to build a smaller addition that will comply with the setback requirement as the garage then would only be 19 feet deep and would not be usable for the types of vehicles that they intend to store there. They intend to store a boat inside the garage.

**Neighborhood and Site Characteristics**

The subject property is located on Florance Lane, which is a street that runs diagonally instead of east-west or north-south. The properties on the Applicant’s block are laid out in such a manner that the front property lines are parallel with the street but the rear property lines are not. This means that all of the properties are at least somewhat slanted in relation to the street. Several of the houses on the block point southwest towards the street. The Applicant’s house and one other house have facades that face southeast towards the street instead.

The subject property has hilly terrain. Based on County topographical records, the floor of the existing garage sits roughly 10 feet higher than the street so the existing driveway has a 14%-15% slope. The eastern side of property has even more challenging elevation. If the Applicant were to build a driveway on the eastern side of the property to serve a detached garage in the back yard, it would be a roughly 19-foot elevation change and the driveway would still be a roughly 14% to 15% slope but with greater length.

Many developing/suburban communities in Minnesota discourage new driveways from having a slope that is greater than 10% and some require a variance if a driveway is going to be steeper than that. The Applicant’s proposed driveway that would serve the garage addition would have closer to a 9%-10% slope.

**Front Yard Setback Code Requirement**

South St. Paul is a fully built out community and the Zoning Code consistently emphasizes the fact that new construction should generally “fit in” with its surroundings by matching existing setbacks. The subject property is located in the R-1 Single Family Residential Zoning District. Properties within this zoning district do not have a stable front yard setback requirement (unless there are no other houses on the block in which case the setback requirement is 25 feet). The setback requirement is as follows:

Sec. 118-121. - R-1, single-family district.

(d) Lot requirements. Within the R-1 district, the following requirements shall apply:

(4) Front yard. No building shall be erected, reconstructed, altered or moved nearer to the front lot line than the average setback observed by residential buildings on the same side of the street and fronting thereon within the same block. Further, no part of the structure shall be closer than 25 feet to the street line on which it faces, except when the average setback is less than 25 feet.
The Code requires that houses be set back whatever the block average is for other existing houses on the block. The front yard setback is the distance between the front of the house and the front property line. Because of the way that Florance Lane is angled, some of the houses on the Applicants’ block have one front corner that is significantly further from the front property line than the other front corner. The “average setback” is based on the part of each house that is closest to the front property line.

There are five (5) existing houses on the same block as the subject property. These houses have the following setbacks:

- 2304 Florance Lane is set back 39.3 feet from Florance Lane
- 2314 Florance Lane is set back 36.2 feet from Florance Lane (neighbor to the east)
- 2402 Florance Lane is set back 39.3 feet from Florance Lane (neighbor to the west)
- 2410 Florance Lane is setback 39.2 feet from Florance Lane
- 2424 Florance Lane is setback 23.6 feet from Florance Lane

The block average based on these five (5) properties is 35.52 feet. The proposed addition would have one corner that is located 29.7 feet from the front property line which would require a 6-foot setback variance. Notably, the other front corner of the Applicants’ addition would be 42 feet away from the front property line. Because the addition will be built at an angle, only a portion of it fails to meet the setback requirement.

**Discussion**

Staff believes that it is a reasonable request to want a safer driveway and a garage that can store more than one vehicle. The subject property has challenging topography which could be used to justify a variance approval. Additionally, the home will continue to have a fairly significant setback and a front yard that is similar in size to other front yards in the neighborhood. The houses on the Applicants’ block do not have a uniform setback or street presence so the Applicants’ house will not “stand out” as it might on a block with a more standardized configuration of houses.

Staff would note that the proposed addition will result in the home’s appearance being somewhat more “garage forward” than most other houses in the neighborhood. The Applicants plan to put living quarters with windows above the garage and this will help mitigate the visual effect of the large garage. Many existing homes in the neighborhood have tuck-under garages.

**Variance Analysis**

The Planning Commission is asked to review the proposed variance using the criteria laid out in the City Code. Staff and the City Attorney have drafted an analysis that the Planning Commission can use if they wish to recommend approval of the variance:

a. That the variance is in harmony with the general purpose and intent of the ordinance
   
   The setback adjustment is in reasonable harmony with general purpose and intent of the setback ordinance.

b. That the terms of the variance are consistent with the Comprehensive Plan.
   
   The variance does not contradict the comprehensive plan.

c. That economic considerations are not the reasoning for the variance
Economic considerations are not the reasoning for the variance. The Applicants desire to have a larger garage, a safer driveway, and expanded living quarters for their family. The property has challenging topography that makes it difficult to accomplish these goals while adhering to the Code’s setback requirements.

d. That the Property Owner proposes to utilize the property in a reasonable manner

The addition of a three-car garage and additional living space is a reasonable manner to use the Applicant’s residential lot.

e. That the plight of the property is not due to the circumstances created by the property owner

The complicated and steep grades of the property are unique and were not created by the Applicant. In addition, the safety issues related to the steep grades are a potential safety issue for the Applicant and the City (cars sliding into the road) and not created by the Applicant. Applicant’s proposal will resolve this possible safety issue and solve the grade issue.

f. That the variance will not alter the essential character of the neighborhood.

The addition will not alter the essential character of the neighborhood. It appears from the map that the home is on the smaller side for the neighborhood. Adding the addition will likely make it one of the larger homes, but still within the character of the surrounding area.

Staff Recommendation

Staff recommends approval of the setback variance, subject to the following conditions:

1. The Applicants must obtain a building permit prior to starting construction.

2. A six-foot front yard setback variance is granted. The project must observe a 29.52-foot front yard setback requirement.

3. The addition must be architecturally compatible with the existing house in terms of siding materials, roofing materials, and color. The Applicants shall indicate what materials and colors are being used on the building permit application.

4. The Applicants must obtain a concrete/asphalt permit prior to construction of the new driveway. The Applicants must comply with all zoning code requirements for residential driveways. Each single-family home may only have one driveway access off of a public street. Driveway widths are limited to being not more than 22 feet at the front property line. No more than 1/3 of a front yard may be paved for parking surfaces. The Applicant will need to provide the dimensions of the new driveway to verify compliance with these rules.

5. A right-of-way permit shall be obtained before the Applicants install a new curb cut. If a new curb cut is installed, the Applicants shall be responsible for removing the old curb cut that serves the old driveway and replacing it with curb and gutter to match the curbline. This is all at the Applicants’ expense. The design of the curbing is subject to review and approval by the City Engineer.
6. Per City Code, the variance will terminate if improvements have not substantially begun within 1-year from the date of approval of the variance. The violation of any condition of approval may result in the termination of the variance, following a hearing by the City Council.

A seventh condition could be added if the Planning Commission wants to be assured that there will be living quarters above the garage to help mitigate the visual effects of the large/prominent 3-car garage. As noted above, the Applicant is already planning to do this:

7. The approval of the setback variance for the large/prominent attached garage is contingent upon living quarters being built above the garage with at least two (2) windows facing the street.

**Required Action**

The Planning Commission has the following actions available on the proposed application:

A. **Approval.** If the Planning Commission wishes to recommend approval of the variance, the following action should be taken:

   - Motion to recommend approval of the front yard setback variance for 2324 Florance Lane, subject to Staff’s recommended conditions of approval.

B. **Denial.** If the Planning Commission wishes to recommend denial of the proposed setback variance, the following

   - Motion to recommend denial of the front yard setback variance for 2324 based on a finding that the variance does not comply with the Code’s criteria for variances.

If the Planning Commission wishes to recommend denial, they should adopt a finding that the project fails to satisfy at least one (1) of the Variance criteria:

(1) The variance is in harmony with the general purpose and intent of the ordinance;

(2) The terms of the variance are consistent with the comprehensive plan; and

(3) The applicant for the variance establishes that there are practical difficulties in complying with the ordinance. Economic considerations alone do not constitute practical difficulties. "Practical difficulties" as used in connection with the granting of a variance means that:

   a. The property owner proposes to utilize the property in a reasonable manner;
   b. The plight of the property owner is due to circumstances unique to the property that were not created by the property owner; and
   c. The variance will not alter the essential character of the neighborhood.
ATTACHMENTS

A. Site Location Map
B. Survey/Site Plan for Proposed Addition
C. Proposed Driveway Plan
D. Proposed Building Plans
E. Survey Showing Front Yard Setbacks on Applicants’ Block
F. Photographs of Subject Property
G. Applicants’ Narrative
Joseph and Athlee Gobely
2324 Florence Lane
South St. Paul

Lot 9

Existing front yard = 6,190 sq ft

Proposed new concrete driveway = 1,054 sq ft
ATTACHMENT E
SURVEY SHOWING FRONT YARD SETBACKS ON APPLICANTS' BLOCK

CERTIFICATE OF SURVEY FOR:
JOE GOBELY
2324 FLORENCE LANE, CITY OF SOUTH ST. PAUL, DAKOTA COUNTY, MINNESOTA

JOB NO: 2020 GOBELY 001
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HONSA SURVEYING
1592 PACIFIC AVENUE, EAGAN, MN 55122 (951) 492-6725
ATTACHMENT F
PHOTOGRAPHS OF SUBJECT PROPERTY
ATTACHMENT G
APPLICANTS' NARRATIVE

Joseph and Ashlee Gobely
2324 Florance Lane, South Saint Paul, MN 55075

The following is our challenges that we face with our property:

- Single car tuck under garage which cannot fit a normal size truck
- Very steep driveway, which we have experienced in the winter our vehicles sliding out of the driveway on their own into the street. As homeowners, this scares us because if a child would be walking by or another vehicle could get hit.
- Angle at which the home was originally constructed in relation to the road.
- Trying to build in the rear of the property causing more grade and an even steeper driveway. This also creates about 80 feet of a blind spot as you are driving before you can see both sides of the street. If there were any ice this would cause a vehicle to slide 140 feet down a driveway.

What have we done over last 2 years of planning and how we reached the point of planning that we are at now:

- Considered building in the rear- 140-foot driveway with an increased grade causing more concern for safety. First 80-feet of driveway would be blocked by neighboring houses, so you are unable to see if you are clear as you start to enter the roadway. This would destroy a backyard that is essential for any family. Doing this would cause family to play in the front yard, which then leads to balls or other items going into the street.
- Looked into how to build into the front of the home.

The below plan I believe is going to cover everything we are trying to accomplish- safety, livability, appearance and improvement to neighborhood:

- A survey was completed and the block average was found to be 35.52 feet to the front property line.
  - Our East corner of the new garage/addition will be 42 feet from the property line.
  - Our West corner will be 29.7 feet from the property line. Due to the angle of how the home was originally built this is the corner we are asking for you to grant us a variance, as we will be about 5.8 feet closer to the property line then the block average.
  - Making the garage any smaller would not allow me to store my boat inside of it.
- We are also going to build the garage 4 to 5 feet lower then the existing basement of the home.
  - This is to level out the driveway to eliminate the safety issue of our vehicle's sliding into the street in the winter unattended.
Joseph and Ashlee Gobely  
2324 Florance Lane, South Saint Paul, MN 55075  

- In doing this we will be 4 to 5 feet below the home with the garage. When we frame in the first level of 8 feet this will put the garage wall height at 12 to 13 feet inside. Then we are going to place a living space above the garage even with the second level of the existing home. We are asking for a variance to build our wall height 2 to 3 feet maximum above the 10 feet wall height code.  

Our home will be getting all new siding, windows, roof, and concrete work.  

Both my wife and I have lived in South Saint Paul our entire life. Our parents are current South Saint Paul residents and have been for over 40 years. We have both served as volunteers with South Saint Paul Jaycees. I have also previously served for 3 years as a South Saint Paul Police Reserve putting in over 500 hours a year. We have been active members of this community and want to stay. The project will be a major addition to improve the area we live in and hope you can consider the commitment of trying to figure out how to effectively improve our residence. We are a young couple and could not easily sell our home in this market to get the improvement in some other community that we are looking at doing here. But our family roots are here and we would love the opportunity to improve our community and stay members of this amazing community.  

Sincerely,  

[Signature]  

Joseph and Ashlee Gobely.
ACTION REQUESTED
A motion recommending approval of an ordinance repealing and replacing the City’s nonconformity ordinance.

BACKGROUND/ DISCUSSION

Application
The Applicant, the City of South St. Paul, is proposing a repeal and replace of the City’s nonconformity ordinance to update the City Code’s existing rules for land use nonconformities (also known as the “grandfather” ordinance). The City’s nonconformity rules received their last significant update in 1992. The proposed amendment tracks with changes in state law, modeling its language on the terms now employed in the applicable statute.

Review Timeline

- **Planning Commission Public Hearing:** July 8, 2020
- **Tentative City Council 1st Reading:** July 20, 2020
- **Tentative City Council 2nd Reading:** August 3, 2020
- **60-Day Review Deadline:** Not Applicable

Background
A legal nonconformity is a land use that was lawful when it began but which no longer complies with City Codes. Minnesota Statutes § 462.357 establishes rules and regulations for lawful nonconformities. Most Minnesota cities have a nonconformity ordinance in their local zoning code which:

- Reiterates the statewide rules for lawful nonconformities that are laid out in the statute.
- Establishes additional local rules in situations where the statute allows.

South St. Paul’s existing nonconformity ordinance was written in 1992. The Legislature revised Minnesota’s nonconformity statute in 2004 and, as a result, the language of the City Code no longer tracks well with the
Statutory language and may cause confusion for property owners in the community. The City Attorney is advising that the City update its nonconformity ordinances in two steps:

1. Repeal and replace the main nonconformity ordinance. *This is the ordinance that is currently being considered and is the subject of this public hearing.*

2. Review the other parts of the City Code that touch on the regulation of lawful nonconformities and ensure that they reflect current policy choices and align with the Comprehensive Plan. *This is a future planning effort. These Code sections may reflect outdated policies and goals.*

**Overview of Proposed Changes**

For many years, state law allowed nonconformities to be “repaired and maintained.” But if a nonconformity was destroyed or damaged in such a way that it lost more than 50% of its value, it could not be rebuilt without conforming to modern zoning codes.

In 2004, the Legislature amended state law to allow nonconformities to be repaired, maintained, improved and replaced, but not expanded. Owners of nonconformities that are destroyed now have 180 days to apply for a building permit to rebuild. As long as they apply within 180 days, they can rebuild without meeting modern zoning codes, although the City may place some conditions on the building permit to mitigate adverse impacts to adjacent properties or bodies of water.

The Zoning Code has several sections (§§ 118-65 -- 118-68) that establish the City’s rules for nonconforming uses and nonconforming structures. The proposed repeal and replace of the nonconformity ordinance will take these sections and update the language to track with current state law.

**Staff Recommendation**

Staff and the City Attorney recommend approval of the proposed ordinance repealing and replacing the nonconformity ordinance.

**Planning Commission Action**

A motion recommending approval of the proposed ordinance repealing and replacing the nonconformity ordinance. *This is recommended.*

**Attachments**

A- Proposed Ordinance Repealing and Replacing the Nonconformity Ordinance  
B- Existing Nonconformity Ordinance  
C- List of Zoning Code Sections that Relate to Nonconformities
AN ORDINANCE REPEALING AND REPLACING SECTIONS 118-64 THROUGH 118-68 REGARDING NONCONFORMITIES

The City Council of the City of South St. Paul does ordain:

SECTION 1. REPEAL AND REPLACE. South St. Paul City Code Sections 118-64 through 118-68 are hereby repealed and replaced as follows:

Sec. 118-64. - Nonconformities.

(a) General Rule. Except as otherwise provided elsewhere in this Code or under Minnesota Statute, any nonconformity, including the lawful use or occupation of land, building, structure, or premises existing at the time of the adoption of additional regulations under this Code, may be continued including through repair, replacement, restoration, maintenance, or improvement, but not including expansion.

(b) Exceptions. The nonconformity may not be continued if:

(1) The nonconformity or occupancy is discontinued for a period of more than one year; or

(2) Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the Dakota County Assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. If a building permit is applied for within 180 days of the damage, City staff may impose reasonable conditions upon the zoning or building permit in order to mitigate any newly created impact on adjacent property or water body.

Any subsequent use or occupancy of the land or premises that has lost its nonconforming status shall thereafter be a conforming use or occupancy.

Sec. 118-65. – Nonconforming building or structure.

A nonconforming building or structure shall not be added to, enlarged, or expanded in any manner unless such additions and enlargements are made to conform with all the requirements of the zoning district in which such building or structure is located.

Sec. 118-66. – Nonconforming uses.

A nonconforming use of a building, structure, or land may not be changed to another nonconforming use. A nonconforming use of a building, structure (for example, a commercial use in a residential dwelling), or land shall not be expanded into any other portion of said building, structure, or land.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:
This ordinance is repealed and replaced to conform with Minnesota state statute regarding nonconformities.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective upon publication.

Approved: ___________________________

Published: __________________________

____________________________________
Christy Wilcox, City Clerk
Attachment B
Existing Nonconformity Ordinance

Sec. 118-64. - Nonconforming building.

No repairs or alterations may be made to a nonconforming building or structure, as defined by this Code, except those needed to maintain the structural soundness of such building or structure and those that may be permitted by this chapter, except by consent of the city council. A nonconforming building shall not be added to or enlarged in any manner unless such additions and enlargements are made to conform to all the requirements of the zoning use district in which such building or structure is located, nor shall it be moved in whole or in part to any other location on the same lot or on any other lot unless every portion of such building or structure is made to conform to all the regulations of the district in which such building or structure is situated.

(Code 1992, § 1500.05, subd. 1)

Sec. 118-65. - Damage to nonconforming building.

(a) Any nonconforming building or structure, as defined by this Code, damaged by fire, wind, tornado, other natural disaster, or other case, shall not be rebuilt, repaired, or used if the cost of the restoration exceeds 50 percent of its current market value, as determined by assessment by the county assessor in accordance with state law (the "assessed value"), and if no building permit has been applied for within 180 days of when the property is damaged. Any such building or structure may not be rebuilt, repaired, or used unless it is made to conform to all zoning and building regulations for buildings or structures in the district in which it is located.

(b) The cost of the rebuilding or repair must be established by the building owner by not less than two estimates by building contractors regularly engaged in the construction, restoration, rebuilding, or repair, as the case may be, of the building type for which the estimate is made.

(Code 1992, § 1500.05, subd. 2)

Sec. 118-66. - Lawful nonconforming use of building.

Except as otherwise provided in this chapter, the nonconforming use of a building or structure, as defined by this Code, lawfully existing as of the effective date of the ordinance adopting this chapter may be continued. The use of a nonconforming building or structure may not be changed to another nonconforming use. The use of a nonconforming building or structure that became vacant after the effective date of the ordinance adopting this chapter may be occupied by the use for which the building or structure was designed or intended, if so occupied within a period of one year after the building becomes vacant. A nonconforming use of a conforming building or structure (for example, a commercial use in a dwelling and the like) shall not be expanded or extended into any other portion of such conforming building or structure, nor changed except into a conforming use. If such nonconforming use or portion thereof is discontinued or changed to a conforming use, any future of such building or portion thereof shall conform with the regulations of the zone in which such building or structure is located.

(Code 1992, § 1500.05, subd. 3)

Sec. 118-67. - Nonconforming use of land.

The nonconforming use of land on which no main building or structure is involved existing as of the effective date of the ordinance adopting this chapter may be continued on the same basis and in accordance with the foregoing provisions of this chapter, provided that no such nonconforming use of land shall in any way be expanded or extended on the same or adjoining property, and further provided that if such nonconforming use of land or any portion thereof is discontinued or changed, any future use of such land shall be in conformity with the regulations of the zoning district in which such use is situated.

(Code 1992, § 1500.05, subd. 4)
Sec. 118-68. - Nonconforming uses created by rezoning.

The provisions of this division shall apply to buildings, structures, land or uses that may hereafter become nonconforming, as defined by this Code, by reasons of the rezoning of the area in which the same may be situated.

(Code 1992, § 1500.05, subd. 5)

Secs. 118-69—118-94. - Reserved.
South St. Paul has several Zoning Code Sections that regulate land use nonconformities (grandfathered uses or structures):

A. Section 118-8 contains a very detailed definition for “nonconforming use, lot, or building.”

B. Section 118-9 contains rules for existing buildings that do not comply with the architectural requirements that are required for buildings in the I-Industrial and GB-General Business zoning districts.

C. Section 118-39 contains the rules for variances when dealing with a nonconforming use.

D. Sections 118-64 through 118-68 contain the general rules for nonconformities.

E. Section 118-125 Concord Gateway Mixed-Use District contains specific rules for nonconforming buildings that are located in this zoning district.

F. Section 118-127 North Concord Mixed-Use District contains specific rules for nonconforming buildings that are located in this zoning district.

G. Section 118-171 contains the rules for nonconformities located within a floodplain area.

H. Section 118-338 contains the rules for nonconforming signs.

I. Section 1500.41 (The Airport Zoning Ordinance) contains specific rules for nonconformities in the parts of the City that are subject to airport safety regulations.

The proposed “repeal and replace” will only impact the five (5) code sections identified in “D.” This will bring the Code into alignment with State Statute. The other Code sections all contain policy-related regulations, most of which define a nonconformity and establish regulations surrounding expansions of nonconforming buildings. State Statute preempts any City Codes that may be out of alignment with Statute. These sections should be reviewed at a later date to ensure that they are fully supportive of the Comprehensive Plan.
AGENDA ITEM 4.C
South St. Paul Planning Commission

**Prepared By:**
Monika Mann, Community Development Support Specialist

**Meeting Date:**
7/8/2020

**Item Description:**
Public Hearing for an Ordinance Amendment Establishing a New Solar Energy Ordinance

**Reviewed By:**
Michael Healy, City Planner

**ACTION REQUESTED**
A motion recommending approval of the proposed zoning ordinance amendment establishing a new solar energy ordinance.

**BACKGROUND/ DISCUSSION**

**Application**

The applicant, the City of South St. Paul, has proposed the following:

1. An ordinance amending Section 118-265 to include definitions, performance standards, and a new use category for alternative energy systems, specifically solar energy systems.

**Review Timeline**

*Per City Code, all ordinances must be reviewed by the City Council at two (2) separate meetings before adoption.*

- **City Council Work Session Discussion:** June 22, 2020.
- **Planning Commission:** July 8, 2020
- **Tentative City Council Meeting for First Reading of Ordinance:** July 20, 2020
- **Tentative City Council Meeting for Second Reading of Ordinance:** August 3, 2020
- **60-Day Deadline:** NA, City is the Applicant
Background

The Zoning Code’s existing solar ordinance is very short and was written in 1992, before solar energy systems were commonplace. The existing ordinance is two sentences long, does not contain performance standards, and simply states:

Section. 118-265. - Solar energy protection.

Access to sunlight for active and passive solar systems (for the heating and cooling of buildings) shall be protected in accordance with the applicable state statutes and regulations. All active solar systems proposed shall require a conditional use permit.

Staff is bringing forward an update of the City’s standards for solar energy systems in accordance with the City’s draft 2040 Comprehensive Plan. This proposed amendment to Section 118-265 encourages the use of solar energy systems by removing barriers for residents and businesses that are interested in investing in alternative energy systems and setting clear standards for the construction of these systems. The draft ordinance is formatted in such a way that it will easily allow for the future addition of rules related to wind and geothermal energy systems if the City someday chooses to encourage those types of alternative energy within City limits. No regulations relating to those two energy types are proposed at this time.

Summary of Issues with the Existing Ordinance

The existing ordinance does not currently include a definition of what the terms “passive solar system” and “active solar system” mean. These are technical terms which refer to specific types of solar energy technologies. The most common solar energy systems, such as roof-mounted solar panels, are “active systems.” The existing ordinance requires a Conditional Use Permit (CUP) for any active solar system.

Most cities that want to encourage solar energy no longer require a CUP for solar panels. A CUP requirement adds additional cost, an element of uncertainty, and a 45-day review period with required attendance at two City meetings. Very few residents are willing to go through that process to install solar panels on their roof. Cities that want to encourage solar energy typically only require a building permit for solar panels. Staff can issue the building permit as long as all performance standards in zoning code have been met.

It appears that South St. Paul made a policy decision to stop requiring a Conditional Use Permit for solar panels many years ago, but the Code was never amended to catch up with that policy decision. Consequently, there are no performance standards in the Code to govern solar panels. This means that Staff has been assigning conditions “case by case” without clear guidance from the Code when processing the building permits. Additionally, City Staff is operating in a somewhat tricky “gray area” right now, since the Code still technically says that a Conditional Use Permit is required for solar panels.
South St. Paul’s 2040 comprehensive plan lays out that one of the City’s policy goals is to establish clear zoning standards for solar energy systems and allow rooftop solar systems as a permitted accessory use. The ordinance can be cleaned up simply by implementing that comprehensive plan goal.

“Active” and “Passive” Solar Energy Systems Defined

Solar energy systems are devices or structural design features of which the primary purpose is to provide for interior lighting or provide for the collection, storage and distribution of energy for space heating or cooling, electricity (generation), or water heating. There are two kinds of solar energy systems: active systems and passive systems.

Active solar energy systems harvest energy by transferring collected solar energy into another medium using mechanical, electrical, or chemical means. Photovoltaic (PV) solar panels are the best known active solar energy system. Active solar energy systems are typically either roof mounted or ground mounted.

Passive solar energy systems utilize building constituents such as walls, floors, roof, windows, exterior building elements and landscaping that captures solar light or heat generated by the sun without transforming it to another form of solar energy or the use of mechanical and electrical equipment to enhance the conversion of solar energy to heat and electric power.

Comprehensive Plan Guidance

The South St. Paul Draft 2040 Comprehensive Plan contains the following recommended action:

Action 4.11: Establish zoning standards for alternative energy installations and establish permitting processes that are predictable, transparent, and documented. Standards should address the following:

» Allow rooftop solar installations as a permitted accessory use

» Exempt rooftop solar installations from height limitations or allow rooftop solar installations to extend 10-15 feet above the maximum height for a building

» Establish regulations to require pollinator friendly landscaping for ground-mounted solar gardens or solar farms

Proposed Alternative Energy Ordinance

Staff has drafted an ordinance amendment that would implement the comprehensive plan goal and align South St. Paul’s ordinance with regionally accepted best practices concerning solar energy. City staff reviewed alternative energy ordinances from a number of Twin Cities area communities. A
synopsis of these ordinances can be found in Attachment A. These ordinances create a picture of best practices for a solar energy system ordinance and were used to guide the proposed ordinance amendment. Some key provisions of the draft South St. Paul ordinance include:


- Classifying Solar Energy Systems as a permitted accessory use in all zoning districts.
  - As an accessory use, a property must still have a principal use in order to install solar equipment. Solar energy equipment cannot be the only use of the property.

- Creating a defined permitting process.
  - A building permit and an electrical permit are required.

- Creating performance standards for solar energy systems.
  - Roof-mounted solar is allowed on any roof.
  - Roof-mounted solar energy systems shall generally not exceed the maximum building height. A roof-mounted solar energy system located in an industrial district may be no taller than ten (10) feet above the maximum building height. A roof-mounted solar system in a residential zoning district is limited to extending 3 feet off the roof surface.
  - Roof-mounted solar does not need to “color match” or complement the roof of the building that it is on. All solar panels are dark blue so a color-match requirement would prevent many buildings from being able to have roof-mounted solar.
  - Roof-mounted solar must be angled in such a way that the panels do not reflect light into neighbors’ windows. Screening may be required to address glare issues.
  - Ground-mounted systems cannot exceed 15 feet in height.
  - Ground-mounted systems on residential properties cannot exceed 200 square feet without first obtaining a Conditional Use Permit.
  - Ground-mounted systems on residential properties do not count towards the 30% limit on “lot coverage” and are exempted (as swimming pools and decks already are).
  - Ground-mounted systems are restricted to back yards (and side yards in industrial and commercial zoning districts).
  - Ground-mounted systems in commercial and industrial areas cannot exceed 25% coverage of the lot.

Staff was not able to identify any viable areas in the community that would be good candidates for “solar gardens” or “solar farms” which are fields of solar panels that function as a standalone use. These installations are typically very land-intensive with a 5-Megawatt solar garden requiring roughly 25 acres of land. Large standalone solar gardens are typically found in rural areas where land values
are low and the amount of land necessary can be obtained economically without having a negative impact on development. Therefore, Staff has not included “solar gardens” or “solar farms” in the draft ordinance, but these concepts can easily be added at a later time if a site in South St. Paul is identified as a good candidate for one of these facilities.

Discussion

Staff and the City Council are seeking Planning Commission feedback regarding the proposed performance standards. There are a few performance standards that are still “works in progress” and Staff is asking that the Planning Commission give special consideration to the following:

- In residential districts, should ground mounted solar energy systems be required to follow the same setbacks as other accessory structures (such as garages and sheds) or should they have their own stricter standards?
  - St. Paul, Minneapolis and Maplewood state that ground mounted solar panels are subject to the setbacks of accessory structures
  - Mendota Heights requires ground mounted solar systems to be setback 15 feet from all property lines and 30 feet from all dwellings located on adjacent lots.
  - Burnsville requires ground mounted solar energy systems to adhere to accessory structures setbacks AND requires ground mounted systems to be at least 30 feet away from all dwellings located on adjacent lots.

- Should ground mounted solar energy systems in residential districts be required to conform to the area restrictions for accessory structures (200 square feet) with the option for a larger system IF a conditional use permit is obtained?

- Should ground mounted solar energy systems count as one of the two accessory structures allowed on single family lots? Each property currently gets one (1) detached garage and one (1) “other” structure which cannot be more than 200 square feet unless a conditional use permit is obtained.

- Should ground mounted solar systems be exempt from lot coverage requirements similar to decks and swimming pools?

- Should there be any type of height exemption for roof-mounted solar energy systems, possibly just in industrial zoning districts?

- Should staff add a conditional use permit option for businesses that have a creative solar energy system project that fall outside the realm of these standards?
June 22\textsuperscript{nd} Work Session

Staff brought the proposed solar ordinance to the June 22\textsuperscript{nd} City Council Work Session. The City Council discussed the discussion points presented above. Staff received the following preliminary feedback from the City Council members although they wanted to hear the Planning Commission’s thoughts before making a final decision:

- Ground-mounted solar energy systems should adhere to the same setback requirements as other accessory structures.
- Ground-mounted solar energy systems should not count as one of the two accessory structures allowed on single-family lots.
- Ground-mounted solar energy systems should be exempt from lot coverage requirements similar to pool and decks.
- A conditional use permit options should be available for commercial and industrial properties for creative solar projects that do not fall within the realm of the proposed ordinance.

Staff Recommendation

Staff is recommending approval of the “core” of the proposed ordinance but is asking the Planning Commission to review the proposed performance standards and recommend modifications, additions, and removals as they deem necessary.

Action Needed

Recommended Action: A motion recommending approval of the proposed solar ordinance, either as presented or with modifications.

Alternative Action: A motion recommending denial of the proposed solar ordinance.

ATTACHMENTS
A. Proposed Solar Ordinance
B. Summary of Solar Energy Ordinances in Other Cities
AN ORDINANCE AMENDING SECTION 118-265 TO CREATE PERFORMANCE STANDARDS FOR ALTERNATIVE ENERGY SYSTEMS.

The City Council of the City of South St. Paul does ordain:

SECTION 1. AMENDMENT. South St. Paul City Code Section 118-265 is hereby amended as follows:

Section. 118-265. - Solar energy protection. Alternative Energy Systems. Access to sunlight for active and passive solar systems (for the heating and cooling of buildings) shall be protected in accordance with the applicable state statutes and regulations. All active solar systems proposed shall require a conditional use permit.

(a) Definitions.

Alternative Energy System means a ground source heat pump, wind or solar energy system.

Building Integrated Solar System means a solar system where photovoltaic materials are used in place of traditional building materials.

Ground Mounted means a solar system that is freestanding erected directly on the ground using a rack or pole structure.

Roof Mounted means a solar system mounted directly to or abutting the roof of a building.

Solar Energy means radiant energy received from the sun to be collected in the form of heat or light by a solar collector.

Solar Energy System means a device or structural design feature of which the primary purpose is to provide for interior lighting or provide for the collection, storage and distribution of energy for space heating or cooling, electricity (generation), or water heating.

Solar Energy System, active means a solar energy system of which the primary purpose is to harvest energy by transferring collected solar energy into another form of energy or transferring heat from a solar collector to another medium using mechanical, electrical, or chemical means.

Solar Energy System, passive means a solar energy system that utilizes building components such as walls, floors, roof, windows, exterior building elements and landscaping that captures solar light or heat generated by the sun without transforming it to another form of solar energy or the use of mechanical and electrical equipment to enhance the conversion of solar energy to heat and electric power.
(b) **Purpose.** It is a goal of the city to provide a sustainable quality of life for the city’s residents, making careful and effective use of available natural, human, and economic resources and ensuring that resources exist to maintain and enhance the quality of life for future residents. Purposes of this division include:

1. To promote rather than restrict development of alternative energy sources by removing regulatory barriers and creating a clear regulatory path for approving alternative energy systems
2. To create a livable community where development incorporates sustainable design elements, resources and energy conservation and the use of renewable energy.
3. To protect and enhance air quality, limit the effect of climate change and decrease the use of fossil fuels.
4. To encourage alternative energy development in locations where the technology is viable and the negative environmental, economic, and social impacts can be mitigated.

(c) **Solar Energy Systems**

1. **Zoning Districts.** Solar energy systems shall be a permitted accessory use in any zoning district, subject to the regulations of this ordinance.

2. **Permits Required.** No active solar energy systems shall be erected, altered, improved, reconstructed, or moved without first obtaining a building and electrical permit. All solar energy systems must comply with this ordinance.

3. **Exemptions.** The following systems shall be exempt from the requirements of this section and shall be regulated as any other building element requiring a building permit:
   
i. Passive solar energy systems.
   
ii. Building integrated solar energy systems.

4. **Roof-Mounted Solar Systems.** Roof-mounted Solar Systems are allowed subject to the following conditions:
   
i. Height. Roof-mounted solar energy systems shall be subject to the maximum height requirements for each zoning district unless otherwise provided for in this ordinance. A roof-mounted solar energy system located in an industrial district may extend up to (10) feet above the maximum building height. A roof-mounted solar energy system in a residential zoning district which is installed on a residential structure shall be permitted to extend up to three (3) feet above the roof surface, regardless of the height of the structure. For solar energy systems in residential zoning districts, no part of any solar panel may extend more than three (3) feet above the roof surface on which it is mounted.
ii. **Aesthetics.** The color of the solar collector is not required to be consistent with other roofing materials. Reflection angles from collector surfaces shall be oriented away from neighboring windows. Where deemed necessary by City Staff, screening may be required to address glare onto neighboring properties.

5. **Ground Mounted Solar Systems.** Ground Mounted Solar Systems are allowed subject to the following conditions:

i. **Height.** The maximum height of the system shall not exceed fifteen (15) feet from the average natural grade at the base of the system.

ii. **Impervious Surface.** Ground mounted solar energy systems are not considered an impervious surface so long as the surface underneath the system is permeable.

iii. **Location.** Ground mounted solar energy systems shall be limited to rear yards in residential districts. Ground mounted solar energy systems shall be limited to rear and side yards in commercial and industrial districts except through a conditional use permit.

iv. **Maximum Area:**

i. **Residential Districts:** Each residential property may have one (1) ground-mounted solar energy system. This system shall not count towards the maximum number of accessory structures allowed on the property. Ground mounted solar energy systems larger than 200 square feet shall require a conditional use permit.

ii. **Commercial and Industrial Districts:** The system shall not cover more than twenty-five (25) percent of the subject property except through a conditional use permit.

v. **Setbacks.** A ground mounted solar system shall be subject to the setback requirements for accessory structures as found in Section 118-208. Additional setbacks are required in the following environmentally sensitive areas:

i. **Bluff Impact Zones.** No ground mounted solar panel may be placed within 40 feet of an established bluff line per Section 118-167.

ii. **Mississippi River Corridor Critical Area.** No ground mounted solar energy system shall be within 100 feet of the high-water mark of the river per Section 118-167 of this code.

iii. **Wetlands.** No ground mounted solar energy system shall be placed within 30 feet from the delineated edge of any wetland per Section 110-78 of the City Code.

6. **Easements.** Solar energy systems shall not encroach upon any public drainage, utility, roadway or trail easements.
7. **Abandonment.** Any solar energy system which remains nonfunctional or inoperable for a continuous period of twelve (12) months shall be deemed to be abandoned and shall be deemed a public nuisance. The owners shall remove the abandoned system, including the entire structure and transmission equipment, at their expense after obtaining a demolition permit.

**SECTION 2. SUMMARY PUBLICATION.** Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

This ordinance creates definitions and performance standards for solar energy systems.

**SECTION 3. EFFECTIVE DATE.** This ordinance shall become effective upon publication.

Approved: 

Published: 

______________________________________
Christy Wilcox, City Clerk
# ATTACHMENT B
## SUMMARY OF SOLAR ENERGY ORDINANCE IN OTHER CITIES

<table>
<thead>
<tr>
<th>City of Bloomington</th>
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<tbody>
<tr>
<td>- Solar panels are allowed in all commercial and residential districts.</td>
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<tr>
<td>- Solar panels require a building and electrical permit.</td>
</tr>
<tr>
<td>- Ground mounted solar panels over 15 feet in height are considered a “tower” and requires a Conditional Use Permit.</td>
</tr>
<tr>
<td>- Roof-mounted solar panels over 15 feet above roof height are considered a “tower” and requires a Conditional Use Permit.</td>
</tr>
<tr>
<td>- Solar panels do not count towards impervious surface cover.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City of Eagan</th>
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<tbody>
<tr>
<td>- Roof and ground-mounted solar energy systems are accessory uses in all districts.</td>
</tr>
<tr>
<td>- Solar energy systems require a residential building permit and any other permits required by the state.</td>
</tr>
<tr>
<td>- Roof mounted solar systems must comply with height and setback regulations.</td>
</tr>
<tr>
<td>- Roof-mounted solar panels must be setback 1 foot from the edge of residential roofs and 10 feet from the edge of commercial, industrial or institutional structures.</td>
</tr>
<tr>
<td>- A ground-mounted solar energy system shall not exceed 12 feet in height; however, the height may be increased up to an additional 15 feet if the system structure is set back from any property line by an additional two feet for each one foot of height above 12 feet.</td>
</tr>
<tr>
<td>- Solar panels do not need to be consistent with other roofing materials. Reflection angles from collector surfaces shall be oriented away from neighboring windows.</td>
</tr>
<tr>
<td>- A roof-mounted solar energy system shall not cover more than 80 percent of the south-facing roof surfaces or of an entire flat roof surface area. The surface area of ground-mount systems, together with all other structures, shall not exceed a maximum lot coverage of 30 percent for residential and 70 percent of commercial, industrial, and institutional zoning districts.</td>
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<table>
<thead>
<tr>
<th>City of Burnsville</th>
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<tr>
<td>- Solar energy systems are a permitted accessory use in all residential, commercial, industrial and park zoning districts.</td>
</tr>
<tr>
<td>- Solar energy systems require a building and electrical permit.</td>
</tr>
<tr>
<td>- Performance standards are included for ground mounted solar systems, wall mounted solar systems, roof mounted solar systems, and pole mounted solar systems.</td>
</tr>
<tr>
<td>- Solar energy systems shall not be installed within the floodway, flood fringe, floodplain, shore impact zone, bluff impact zone, wetlands, wetland buffers, public waters, or stormwater ponds.</td>
</tr>
<tr>
<td>- Ground mounted solar energy systems must follow accessory structure setbacks.</td>
</tr>
<tr>
<td>Location</td>
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<td>---------------------------</td>
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</tbody>
</table>
| City of Maplewood         | - Roof mounted solar energy systems must comply with setbacks and cannot extend further than the roof. Roof mounted solar systems cannot cover more than 80% of the total south facing roof.  
- Variations to any of the standards can be done by Conditional Use Permit. |
|                           | - Solar energy systems are a permitted accessory use in all districts.  
- Solar energy systems require proper permitting.  
- Ground mounted solar energy systems must meet the accessory structures setback for the zoning district in which it is installed.  
- Roof mounted solar energy systems may not extend beyond the required setbacks of the building on which the systems is mounted.  
- The color of a solar collector is not required to be consistent with other roofing materials.  
- Ground mounted solar energy systems shall be screened from view to the extent possible without reducing their efficiency. |
| City of Mendota Heights   | - Solar energy systems are allowed with all districts subject to the appropriate permitting (building permit).  
- Roof mounted systems shall not exceed the structure height requirements in the applicable zoning district.  
- Roof mounted systems shall comply with all building setback requirements in all districts and shall not extend beyond the perimeter of the building on which the system is mounted.  
- Roof mounted systems shall not cover more than 80% of the roof section upon which the panels are mounted.  
- Ground mounted systems shall not exceed 15 feet in height. Systems shall be setback a minimum of 15 feet from all property boundary lines and 30 feet from all dwellings located on adjacent lots.  
- Ground mounted systems are limited to rear yards in all zoning districts.  
- Ground mounted solar systems have maximum area requirements based by district.  
- Solar energy systems shall use colors that are not visually incompatible with the color of roof material on which the system is mounted.  
- Reflective angels shall be oriented away from neighboring windows and minimize glare towards vehicular traffic and adjacent properties. |