



## MAYOR AND COUNCIL COMMUNICATION

DATE: 6/27//2016

**CONSENT**

ITEM #: 15

**AGENDA ITEM:** Requested Amendments to Accessory Structure Ordinance

**SUBMITTED BY:** Emily Becker, City Planner

**THROUGH:** Kristina Handt, City Administrator

**REVIEWED BY:** Stephen Wensman, Planning Director

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### **BACKGROUND:**

The Planning Commission has made recommendations to the City Council on three changes pertaining to accessory structures.

The first amendment pertains to fish houses. At its May 3, 2016 meeting, City Council directed Staff to amend the City's Accessory Structure ordinance to exempt "fish houses" that are 120 square feet or less in size from the requirement that principal structures be constructed or accessory use be located on lots prior to accessory structures in the Rural Single Family Zoning District.

The request was made due to a significant number of non-conforming lot sizes in the Rural Single Family Zoning District upon which a house would likely not meet setback requirements. Because a significant number of these lots could not be built upon without first obtaining a variance, the request was made so that these lots could be utilized for the recreational purpose a fish house would allow. Accessory structures are not allowed to be erected prior to the existence of or issuance of a building permit for a principal structure, and a variance would not allow the situation, so the only remedy is by text amendment.

The second amendment pertains to Section 154.406, Subd. D, an exception provision that allows accessory structures to be located nearer to the front lot line than the principal structure. The Planning Commission recommends the Council strike the language that allows the exception to be made by Resolution of the City Council. Staff believes the exception is a defacto variance without findings. The City Attorney has also given support for this amendment. The variance process is the appropriate mechanism to grant such exceptions.

Finally, the third proposed amendment is to the definition of "Storage or Tool Shed" in Section 154.213. Staff recommends amending the defined size of such a shed from 160 square feet to 200 square feet in order to align it with MN State Building Code.

### **ISSUE BEFORE COUNCIL:**

The City Council should consider the following:

- 1) If fish houses, with certain provisions, should be exempt from the requirement that principal structures be constructed on lots prior to accessory structures. The Council should also consider what those provisions should be.
- 2) If the language in Section 154.406, Subd. D of the Zoning Code that allows accessory structures to be located nearer to the front lot line than the principal structure by Resolution of the City Council should be stricken. Striking this language will require applicants to go through the variance process.
- 3) If the definition of “Tool Shed” in Section 154.213, Subd B, should be amended by changing the defined size from 160 square feet to 200 square feet to align with MN State Building Code and specifying in the definition that it must comply with the maximum area requirements of the zoning district, providing a principal structure exists on the lot.

### **PROPOSAL DETAILS/ANALYSIS:**

#### **Fish House Exemption:**

**Definition.** The definition of water-oriented accessory structure or facility in Lake Elmo’s City Code lists fish houses as an example of such a structure. Water-oriented accessory structures are exempt from setback regulations of the Shoreland Overlay District if certain provisions are met including: not exceeding a height of ten feet; not being over 250 square feet in size; being set back at least ten feet from the Ordinary High Water Level (OHWL) on a recreational development lake and 50 feet from the OHWL on a natural environment lake; being treated to reduce visibility as viewed from public waters; and cannot be used for human habitation or contain water supply or sewage treatment facilities. The Code does not currently clearly define fish houses.

**Restriction.** Because fish houses are classified as accessory structures, regulations of accessory structures must be met. The Shoreland Ordinance allows only one water oriented structure per lot. By City Code, no accessory structure can be constructed or accessory use be located until a building permit has been issued for a primary structure on a lot. This Code provision is typical in cities in order to maintain control over use of properties for storage and to protect the City against a proliferation of unwanted storage structures.

**Logic Behind Zoning District Restriction.** It is recommended that if an exemption for fish houses from the requirement of a principal structure is considered, the exemption should be restricted only to the RS - Rural Single Family Zoning District for a number of reasons. First, there are a number of lots in this zoning district that are non-conforming, and on which a house could not be built without a variance. Additionally, many of the lots in the RS District are located adjacent to a lake, and allowing fish houses to exist on lots without primary structures would allow owners who do not wish to construct a primary structure to enjoy recreation on the lake without having to haul their fish house to the lake each winter season.

**Potentially-Affected Parcels.** There are currently 221 parcels located in the Rural Single Family District on which a principal structure does not exist. 123 of these parcels are located on a lot adjacent to a lake. 39 of these parcels are a half acre in size or more. A map is included as an addendum to this report to illustrate the locations of these parcels.

**Regulation.** Fish houses are considered accessory structures and therefore will require a Certificate of Zoning Compliance, as any accessory structure located on a property that does not require a building permit requires this Certificate. It is at this time that Staff will be able to determine if most of the requirements of a fish house outlined in its definition are met. Of course, some requirements will not easily be determined, and there may be need for code compliance investigations if complaints are received or it is observed by the City that a property is in violation.

**Potential Impacts.** There are a number of potential impacts that may result from allowing fish houses to exist on parcels without primary structures. First, fish houses may be used solely as storage. Even though the definition outlines that they may not be used for storage, it is hard to know and regulate what occurs inside a structure that is not viewable from the street without going through the proper processes. Also, the design of fish houses is not regulated nor do they require a building permit, so the appearance, safety and durability of the structure are at risk. Section 154.406 of the Zoning Code requires that accessory structures are required to be similar or compatible with the design and construction of the principal building, but without a principal building, there is nothing by which its exterior appearance can be regulated. Additionally, it is hard to regulate fish houses from being used as dwellings, even though the definition does not allow this. On the other hand, allowing fish houses to be constructed/located on a lot without a primary structure would increase the utility of the lot for the owner without them having to go through a variance process and constructing a primary structure and could potentially benefit neighboring properties as adjacent lots can remain mostly vacant, increasing their peace and privacy.

The extra requirements; that a fish house is located on a lot with direct access to a water body; maintains a current fish house license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements, are intended to limit some of the potential impacts. The Council has requested that an additional restriction be adopted that the parcel on which the fish house is located be a half acre or more. This standard has been added to the Draft Ordinance.

**Planning Commission Concern.** During its discussion of this agenda item, the Planning Commission expressed concern that if every one of these lots had a fish house, it may lead to complaints by the neighbors.

**Requiring the Variance Process for an Accessory Structure to be Located Nearer to the Front Lot Line than the Principal Structure:**

**Variance Process.** The Board of Adjustment has the power to grant variances to the provisions of this chapter under certain procedures and standards. All requests for variances shall be reviewed in accordance with the required findings. A public hearing is to be held by the Planning Commission, after which findings are considered and a recommendation is made to the Board of Adjustment. The current process of allowing accessory structures to be located nearer the front lot line than the principal structure by Resolution of the City Council does not follow this process outlined in Section 154.109: Variances of the Zoning Code.

**History.** Since 1993, Staff has found that approximately 29 approvals for accessory structures to be located nearer to the front line than the principal structures have been made by Resolution of City Council.

### **Tool Shed Definition:**

The proposed definition of “Storage or Tool Shed” would align the City’s definition with the Building Code. Currently, the Building Code does not require permits for structures under 200 square feet. Changing the definition of a Storage or Tool Shed in the City Code would make it consistent with this requirement.

The Planning Commission also recommends that that the definition include clarification that one storage or tool shed may be placed on any lot in addition to the number of accessory buildings, provided it complies with the maximum area requirements of the zoning district, providing a principal structure exists on the lot. The current definition had been confusing to Staff and led to misinterpretations.

### **FISCAL IMPACT:**

Allowing fish houses to be located on lots in the absence of principal structures may increase the amount of time Staff spends in response to code compliance complaints as fish houses may be used for storage or habitation as is not allowed per the proposed ordinance.

Requiring the variance process for accessory structures to be located nearer to the front line than the principal structure may increase the amount of time Staff spends on such requests, though the cost of a variance is much higher than the cost of the request of Resolution by City Council (\$750.00 vs. \$200.00, respectively). The change may also reduce the number of such requests.

No fiscal impact is foreseen by amending the definition of a Storage or Tool Shed in this ordinance.

### **OPTIONS:**

The Council may approve or deny the recommended amendments to the Accessory Structure ordinance as proposed or may edit amendments as deemed appropriate.

### **RECOMMENDATION:**

Staff respectfully requests, as part of tonight’s consent agenda, the Council approve the three proposed changes to the Accessory Structure ordinance:

- 1) An exemption for fish houses, with certain standards, to the accessory structure requirement that a building permit be issued for a primary structure before an accessory structure or use can exist on a lot.
- 2) Striking the language that allows an accessory structure to be located nearer the front lot line than the primary structure “by Resolution of the City Council.”

- 3) Amending the definition of “Storage or Tool Shed” in Section 154.213, Subd B, to change defined size from 160 square feet to 200 square feet to align with MN State Building Code and specify in the definition that it must comply with the maximum area requirements of the zoning district, providing a principal structure exists on the lot.

If removed from the Consent Agenda, the recommended action can be completed through the following motion:

***“Move to approve three amendments to the Accessory Structure Ordinance: allowing an exception for fish houses that meet certain standards from the requirement that a building permit for a principal structure be issued before an accessory structure can exist on a lot; striking language in Section 154.406, Subd. D of the Zoning Code that allows an accessory structure to be located nearer a front lot line than the principal structure by Resolution of the City Council; amending the definition of Storage or Tool Shed in Section 154.213, Subd. B by increasing square footage requirement for a building permit and adding clarifying language.”***

In addition, Staff is recommending that the City Council authorize summary publication of the approved ordinance through the following ordinance:

***“Move to adopt Resolution 2016-47, authorizing summary publication of Ordinance 08-138”***

**ATTACHMENTS:**

- Draft Ordinance Accessory Structure Ordinance Amendment.
- Resolution 2016-47 Summary Publication of Accessory Structure Ordinance Amendment.
- Map depicting parcels potentially affected by the proposed fish house exemption.