

**MINUTES
CITY OF DUBUQUE ZONING BOARD OF ADJUSTMENT
REGULAR SESSION**

5:30 p.m.

Thursday, October 28, 2021

City Council Chambers, Historic Federal Building

Board Members Present: Chairperson Jonathan McCoy, Board Members Keith Ahlvin, Gwen Kosel and Matt Mauss.

Board Members Excused: Bethany Golombeski

Board Members Unexcused: none

Staff Members Present: Shena Moon, Travis Schrobilgen and Jason Duba

CALL TO ORDER: The meeting was called to order by Chairperson McCoy at 5:30 p.m.

MINUTES: Motion by Ahlvin, seconded by Kosel, to approve the minutes of the September 23, 2021 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

DOCKET – 29-21: Request for reconsideration of 189 St. Mary's Street.

The applicant, Kody Rife, was not present at the meeting to request the reconsideration. Consequently, the reconsideration request failed because, per the Zoning Board of Adjustment bi-laws, the request had to be discussed at the first meeting subsequent to the original meeting in which the case was acted upon.

DOCKET – 30-21 (tabled from September): Application of Stephen Liske, 295 York Street to construct a 9' x10' deck 0' from the west side property line where 6' minimum is required in an R-1 Single-Family Residential zoning district.

Stephen Liske, 295 York Street, spoke in favor of the request. He explained they are looking to replace an old deck leading to the main entrance of the house. They are hoping to build it back a little larger to make it more usable and in doing so they would be within the required 6' side yard setback.

Staff Member Moon detailed the staff report noting that it is a unique site with an 8' wide co-owned parcel running along the west side of the property. No residents live within the co-owned parcel and there are no other structures located on the property directly to the west, beyond the co-owned parcel. She noted staff has received emails from neighbors in support of the proposed deck in the location presented.

The Board clarified with the applicant that conditions of an open design and building within the property were acceptable. Mr. Liske stated he was in acceptance of this condition.

Motion by Mauss, seconded by Kosel, to approve the request to construct a 9' x10' deck 0' from the west side property line where 6' minimum is required in an R-1 Single-Family Residential zoning district with the condition that the deck remain of an open design and the deck be built within the property line to the satisfaction of the Building Official. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

DOCKET – 32-21: Application of Kate Wolff, Dubuque Sign Company, 2020 Radford Road to permit a second wall-mounted sign where only one is allowed in combination with a freestanding sign in a Planned Commercial zoning district, which applies sign regulations from the C-2 Neighborhood Shopping Center zoning district.

Kate Wolff, 210 Cedar Cross Rd, spoke in favor of the request. She explained that Pizza Ranch is expanding and building a full arcade and looking to install one 31.3-square foot wall-mounted sign to advertise this new offering. She noted the adjacent property owner is fine with their proposal.

Staff Member Duba detailed the staff report noting the history of the property and changes to its zoning over time, as well as changes to the sign code in 2009. He described the changes underway at the Pizza Ranch business, namely the expansion and opening of an arcade. He described signage nearby including a variance. He explained how this sign would have little impact on neighboring residential properties and the vacant lot to the south.

Chair McCoy requested clarification from staff regarding the number of existing signs and the directional sign allowances. Staff Member Duba provided clarification and confirmed directional signs are allowed on site but are generally limited in size.

Chair McCoy and Vice Chair Ahlvin both expressed skepticism that this request met the variance requirement of suffering an undue hardship.

Board Member Mauss expressed support for the application as the proposed sign was on an unsigned side of the building and the sign appeared appropriate.

Chair McCoy suggested the applicant consider tabling the request as one member was absent and use the opportunity to further define how a hardship was present. Ms. Wolff requested to table the request.

Motion by McCoy, seconded by Mauss, to table the request to permit a second wall-mounted sign where only one is allowed in combination with a freestanding sign in a Planned Commercial zoning district, which applies sign regulations from the C-2 Neighborhood Shopping Center zoning district. Motion carried by the following vote:

Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

DOCKET – 33-21: Application of Denise Foht, corner of Peru Road, Louise Street and Monroe Avenue, Parcels 1012376010 and 1012376013 to allow an off-premise residential garage as a conditional use in an R-3 Moderate Density Multi-Family Residential zoning district.

Chair McCoy explained that the Board would hear discussion on both docket items for this property (33-21 and 34-21) and then vote on them separately.

Denise Foht, 723 Peru Road, spoke in favor of the request for both docket items. She explained that she wanted to build a personal garage across the street from her house. She wants to put her cars and belongings in the garage. She said that the two subject lots are large, but she has no plans to build other than a garage at this time.

Clayton Specht, 807 Peru Road, stated that he was fine with a reasonably sized garage but not the large garage proposed.

Dan Ludwig, 801 Peru Road, expressed opposition to the large size of the proposed garage.

Albert Weidenbacher, 3257 Sheridan Road, expressed opposition to the large size of the proposed garage and expressed concern that it could be used as a commercial mechanic shop. He also expressed concerns about the messy state the property is currently in and was concerned the project could result in trash build up on the site.

Ms. Foht responded to say that it would be a personal garage and not for a mechanic shop. She noted many of the cars and other items she hoped to store in it, explaining the need for the large size.

Staff Member Schrobilgen detailed the staff report noting that it's a three-part process, and the Board is reviewing their two items as if the property were already rezoned to R-3. He explained the requirements for approving an off-premise residential garage as a conditional use. He noted the existing legally non-conforming garage onsite and that it would be removed. He expressed the impact on neighbors would be negligible. He explained the change to public right-of-way of a City-owned parcel at this location that would allow unrestricted access to the site. He encouraged the Board to reiterate the conditions of no outside storage and no commercial use.

Board Member Kosel asked how the subject property would be tied to the property on which the residence is located and what would happen if the subject property were to be sold separately, such as if a contractor could then use the garage.

Staff Member Schrobilgen explained that the garage can only be used by a resident within 300' of the garage, it must be residential, not commercial, and that any complaints about the use would be handled by the Planning Services Department.

Vice Chair Ahlvin expressed concern about the size of the garage in the Special Exception request out of concern for the neighbors, not fitting with the area, and interfering with development of the area

Board Member Kosel asked about the building materials to be used in construction and if the garage would match the house.

Ms. Foht expressed that she had not yet settled on whether to construct a wood frame structure or a steel one but that it would be quality construction.

Board Member Mauss expressed support for the Conditional Use Permit but questioned whether the proposed garage would block off access to the second parcel at the back of the property.

Ms. Foht explained that the orientation of garage should be turned parallel to Peru Road, essentially perpendicular to what was shown on the site plan.

Motion by Mauss, seconded by Kosel, to approve the request to allow an off-premise residential garage as a conditional use in an R-3 Moderate Density Multi-Family Residential zoning district with the condition that there be no outside storage and no commercial use. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

DOCKET – 34-21: Application of Denise Foht, corner of Peru Road, Louise Street and Monroe Avenue to construct an 1,800-square foot garage where 720 square feet maximum is allowed in an R-3 Moderate Density Multi-Family Residential zoning district.

(Discussion for this docket item is detailed in the minutes for docket item 33-21 above.)

Motion by Ahlvin, seconded by Kosel, to approve the request to construct an 1,800-square foot garage where 720 square feet maximum is allowed in an R-3 Moderate Density Multi-Family Residential zoning district. Motion failed by the following vote: Aye – None; Nay – Ahlvin, Kosel, Mauss and McCoy, all citing the following three criteria:

- B. That the specific proposed exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish and impair property values within the neighborhood.
- C. That establishment of the specific proposed exception will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone in which such property is located.
- E. That, except for the specific exception being proposed, any structure shall in all other respects conform to the applicable regulations or standards of the zone in which it is to be located.

DOCKET – 35-21: Application of George Martin, 462 W. 3rd St. to construct a rear deck 0' from both side property lines where 4' is required in an R-3 Moderate Density Multi-Family Residential zoning district.

Dominic Goodman, owner of 462 W 3rd Street, and Chris Martin, contractor, spoke in favor of the request. They explained that they are looking to replace a deck that's been in disrepair. They stated the footprint has not changed, they just switched the side the stairs are on.

A representative of St. Raphael's Cathedral spoke seeking assistance with a different matter with the property owner, namely a gate and steps put in between their properties. Staff Member Schrobilgen explained that is a civil matter between property owners and not a matter for the City or Board.

Staff Member Schrobilgen detailed the staff report noting that the new deck does appear larger than the old, the exempt stairs went from one side to the other, and there were no concerns expressed by neighbors.

The Board sought to clarify what was meant in the application by a privacy wall. The applicants explained that it would be a lattice wall on the east and west sides of the deck, but the south side facing the yard would be open.

Vice Chair Ahlvin asked if the applicants could agree to conditions on the privacy walls: a neighbor-friendly design, 7' maximum height, and only on the east and west sides.

Staff Member Schrobilgen stated that approval of the request would be contingent on historic review by Planning Services staff, as the property is in the Cathedral Local Historic District.

Motion by Ahlvin, seconded by Kosel, to approve the request to construct a rear deck 0' from both side property lines where 4' is required in an R-3 Moderate Density Multi-Family Residential zoning district with the following conditions:

1. The deck remains of an open design
2. That privacy walls be no higher than 7', of a neighbor-friendly design, and only on the east and west sides, and
3. That Board's approval is contingent on historic preservation review and approval.

Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

DOCKET – 26-21: Request for reconsideration of 405 Main Street.

Planning Services Manager Wernimont explained the memo from City Attorney Brumwell that the previous meeting's vote to reconsider the August approval for a sign variance for 405 Main Street. He noted that the Board needed to have a new vote on the matter that

allowed for discussion, and, if approved again, the reconsideration would be put on the November agenda.

Chair McCoy disputed the claims of the memo, stating there is no reference to Robert's Rule of Order in the Board's by-laws and that he did not engage in ex-parte communication. He also stated that he did not see the purpose in allowing discussion for the reconsideration vote because he believed the actual reconsideration would provide that opportunity for discussion. He requested a special meeting with the City Attorney to respond to his claims and hold the reconsideration vote then. He also questioned the motives of City staff regarding this case, as Five Flags is a City-owned facility. He then asked the other Board members for their thoughts.

Vice Chair Ahlvin pointed out that engaging in a reconsideration effectively nullifies the previous vote on the matter. He expressed concern because reconsideration requests typically come from the applicant, and it could set a dangerous precedent for the Board to start reconsidering approved dockets, especially if they deal with construction projects that could have gotten underway in the time between Board meetings.

Board Member Kosel responded that this type of action would be undertaken only rarely.

Board Member Mauss expressed that he would make his vote to reconsider the case again because he would like to discuss conditions on the Five Flag sign, such as brightness and hours of operation.

Motion by Mauss, seconded by McCoy, to approve the request to reconsider the sign variance for 405 Main St from the August 2021 Board meeting. Motion carried by the following vote: Aye – Kosel, Mauss and McCoy; Nay – Ahlvin.

Chair McCoy stated that they did not need a special meeting pertaining to the Five Flags docket now that the reconsideration would be on the November agenda, but that he would still like to discuss these issues with the City Attorney at a future meeting.

ITEMS FROM PUBLIC: None.

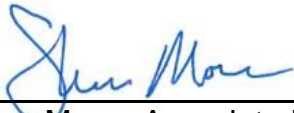
ITEMS FROM BOARD: None.

ITEMS FROM STAFF: Staff Member Moon provided explanation on the City's Covid waiver from the City Attorney.

ADJOURNMENT: Motion by McCoy, seconded by Kosel, to adjourn the October 28, 2021 Zoning Board of Adjustment meeting. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None

The meeting adjourned at 7:05 p.m.

Respectfully submitted,



Shena Moon, Associate Planner

November 18, 2021

Adopted