

**MINUTES  
ZONING ADVISORY COMMISSION  
REGULAR SESSION**

6:00 p.m.

Wednesday, September 6, 2023

City Council Chambers, Historic Federal Building

**Commissioners Present:** Chairperson Matt Mulligan; Commission Members Rich Russell, Carrie Lohrmann, Pat Norton, and Teri Zuccaro

**Commissioners Excused:** Martha Christ

**Commissioners Unexcused:** None.

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

**CALL TO ORDER:** The meeting was called to order by Chairperson Mulligan at 6:00 p.m.

**MINUTES:** Motion by Zuccaro, seconded by Lohrmann, to approve the minutes of the August 2, 2023 meeting. Motion carried by the following vote: Aye – Lohrmann, Russell, Zuccaro, and Mulligan; Nay – none; Abstain – Norton.

**ACTION ITEM/PLAT OF SURVEY:** Application of City of Dubuque Engineering Department to approve the Plat of Survey of Lot 1 and Lot 2 of Bahl Middle Road Place.

Staff Member Shena Moon spoke on behalf of the applicant, noting the proposal is a simple subdivision of property located off Pennsylvania Avenue. She stated the subdivision is purposed in order for the City to acquire property for the future of Middle Road. She discussed the area of each of the proposed lots, displaying a map of the proposed subdivision. She stated that Lot 2 does not have street frontage, so it requires a waiver of this requirement from the Zoning Advisory Commission.

Chairperson Mulligan asked about the timing of the roadway widening, and Staff Member Moon stated that has not been determined by the Engineering Department.

Motion by Norton, seconded by Zuccaro, to approve the Plat of Survey of Lot 1 and Lot 2 of Bahl Middle Road Place as submitted subject to waiving of the street frontage requirement for Lot 2. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

Commissioner Norton recused himself for the next two items.

**ACTION ITEM/PLAT OF SURVEY:** Application of Terry Koelker, Buesing & Associates, Inc. to approve the Plat of Survey of Buelow Place.

Terry Koelker, Buesing & Associates, 1212 Locust Street, spoke on behalf of the property owners, stating the owners have cottages on the rear of the property that are leased out, and they are planning to sell the property to one of the lessors. He stated that Lot 2 does not have street frontage and requires a waiver.

Staff Member Duba detailed the staff report, noting the submitted Plat of Survey of Buelow Place subdivides an approximately 21-acre parcel into two parcels of approximately 12 and 8.7 acres. As Lot 2 does not have street frontage, it requires a waiver. He also stated that this property is in a conservation easement that restricts activity and development of the property.

Commissioners had no questions or concerns about the simple subdivision.

Motion by Lohrmann, seconded by Russell, to approve the Plat of Survey of Buelow Place as submitted subject to waiving of the street frontage requirement for Lot 2. Motion carried by the following vote: Aye – Lohrmann, Russell, Zuccaro, and Mulligan; Nay – none.

**ACTION ITEMS/WAIVER:** Application of Adam Kafer, SIMS Properties, LLC to waive specific requirements of Chapter 13 for property located at 190 N Crescent Ridge.

Pat Norton, Buesing & Associates, 1212 Locust Street, spoke on behalf of the property owners. He stated they are requesting a variety of different waivers from the design standards. He described the property outlining that it was quarried by the previous owner, which leveled the lot and also left it on a rock shelf. He stated the waiver requests are because of the geology, which would require them to make mounds or dig pits to have soil for installing landscaping. He noted the building sits about 30' below the property lines along the north and street and the building is screened by the hillside almost until getting past the building.

Chairperson Mulligan recalled that this property was recently rezoned to allow for new uses. Norton stated that four uses are planned: a CrossFit gym, auto detailing, and two lawn care businesses.

Commissioner Lohrmann asked if they were going to meet any of the landscaping requirements and Staff Member Duba responded that they meet the tree requirement with the existing trees on the south end of the property but are seeking waivers for all other landscape requirements.

Commissioner Lohrmann asked why the applicant requested waiving the bike parking requirement, and Mr. Norton responded that it the site is a difficult place to bike to as bikers would have to cross Highway 20.

Commissioner Lohrmann asked why the applicant couldn't put in the 10' buffer along the road and whether they could plant bushes in pots. Mr. Norton stated the buffer is in a rocky area, and the property owners are considering expanding to the east and don't want to have to move landscaping.

Staff Member Duba detailed the staff report. He noted that the project site recently was recently rezoned to C-3 General Commercial to allow for the gym use. He outlined the Unified Development Code design standards that the applicant is requesting to waive including Parking Lot Layout, Site Landscaping, Parking Lot Landscaping, Exterior Storage in Nonresidential Districts, and Bicycle Parking Required. He noted the geological challenges of this site which is a former quarry and pointed out some ways to incorporate landscaping, such as with berms. He noted that the Commissioners may waive none, some, or all of the standards.

Commissioner Lohrmann stated these requests make sense given the site but expressed that she would like to see the 10' buffer on the parking lot, and that it's hard to see a development go in with no landscaping. Chairperson Mulligan agreed stating that everything to east

Motion by Russell, seconded by Mulligan, to approve waiving specific requirements of Chapter 13 of the UDC as submitted. Motion carried by the following vote: Aye – Lohrmann, Russell, Zuccaro, and Mulligan; Nay – none.

Commissioner Norton returned to the meeting.

**PUBLIC HEARING/REZONING:** Application of William R. Biver, Mary's Inn Maternity Home, to rezone property located at 1749 Churchill Drive (PIN 1022379005 and 1022379004) from R-1 Single-Family Residential to R-3c Moderate Density Multi-Family Residential with conditions.

John Freund, Freund Law Firm, P.C., 1005 Main Street, spoke on behalf of Mary's Inn. He noted the organization is a non-profit maternity home formed in 2014. He introduced the Chair of the Board of Directors for Mary's Inn, Bill Biver, and the Executive Director, Colleen Pasnik, both who were present.

Mr. Freund described the process that Mary's Inn went through eight years ago to rezone a property on Balboa Drive for use as their maternity home. He stated there have been no complaints from neighbors about that property. Mary's Inn is now looking for a larger house for their organization to move to. He said they have a limit of four women and their babies at the house. He described the way the maternity home operates and that they have an onsite staff member. He expressed that it should have little impact on the neighborhood and add little traffic, as most of the women don't have cars. He stated there are specific rules for living at the house. He described how this location is a good fit for their goal to be in a residential neighborhood. They also like the carriage house on the

property, where the day time staff could have their space and the director could have her office. Proximity to a bus line is a feature they are looking for.

Mr. Freund spoke to some of the concerns that neighbors have expressed and referred to the letter Mary's Inn sent to neighbors in an effort to address their concerns. He spoke specifically about the maternity home would not affect the property values and stated that the home on Balboa has increased in property value and does not appear to have harmed property values in the area. He stated they are willing to only rezone the lot the house is on and leave the north lot as R-1. They are also willing to rezone the house property back to R-1 if they move in the future, and they do not want to sell it to a developer. He stated they are willing to accept conditions and want to be good neighbors.

Commissioner Lohrmann asked if they considered other properties. Freund stated they did, and this property was preferred in part because it has the carriage house where the director can have her office onsite.

Chairperson Mulligan asked how long women typically stay at the house. Colleen Pasnik, Director of Mary's Inn, 1535 Alta Vista, stated that the time is specific to the needs of the mother and the average stay is three to four months.

Julie Fuller, 1780 Eden Lane, described her family's tenure in the neighborhood and reasons they like it so much including that it's a mix of all ages and families. She stated she supports the mission of the maternity home but has concerns about this neighborhood becoming R-3 zoning. She expressed concerns about lots considering the various permitted and conditional uses allowed in R-3 districts, the vacant lot being developed for multi-family housing, the difference between a group home and maternity home, and the previous rejection of a Conditional Use Permit for an accessory dwelling unit in 2010. She referenced a letter submitted by Steve Juergens and quoted the letter regarding the issuance of Conditional Use Permits. She concluded by stating she is opposed to the rezoning.

Marlene Habel, 1285 Cortez Drive, stated that she lives close to Mary's Inn on Balboa Drive, and she feels they run the home extremely well, and she has observed no problems with it. Commissioner Lohrmann asked about the location of the Balboa house and Chairperson Mulligan suggested we ask staff to address that question after the public hearing.

Brian Kane, Kane Norby & Reddick P.C., 2100 Asbury, representing John and Ann Riley, 1733 Eden Lane, expressed that the mission of Mary's Inn is not what's being debated, but it's about what the zoning code says. He expressed that a maternity home is not a group home and that there is no definition of a maternity home in the unified development code, so it should not be permitted or a conditional permitted use in this case. Mr. Kane stated that rezoning the property could be spot zoning since it has been R-1 for over 60 years and has not changed. He discussed the three-pronged test established by the Supreme Court which includes (1) whether the new zoning is germane to an object within

the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan. He noted the future land use map shows these parcels as residential and park. Mr. Kane also discussed the possibility of increased traffic to the property both vehicular and pedestrian and asked that the rezoning be considered as not a conditional permitted use, or that it is spot zoning, or that it is inconsistent with the Comprehensive Plan.

Lance Andre, 1735 Eden Lane, described what he liked about his single-family neighborhood including the low volume of traffic along Eden Lane and that many kids play in the area, and expressed that this would be a change. He stated that he's concerned about what happens to the historic home and green space.

Dr. Melissa Claussen, 2979 Pennsylvania Avenue, representing her parents, stated that the concern is not Mary's Inn, it's that they might leave, and the property would become multi-tenant. She stated that the bus stop at this location is across Pennsylvania Avenue and may be a safety concern. She shared an aerial view of the neighborhood for reference and discussed a previous request to rezone the subject property. She expressed concerns about the stress to rezone the neighborhood to R-3. She expressed concern about utilizing the carriage house as an office/business. She expressed concern about lead poisoning and other aspects of the home in question and worried that non-profits don't have oversight.

Sharon Young, 1745 Eden Lane, stated that she's in favor of Mary's Inn but not at the expense of changing their neighborhood. She noted that she signed a petition of opposition and provided that to staff.

Matt Selby, 1851 Eden Lane, stated that he and his family support Mary's Inn, along with their neighbors John & Sadie Robins, 1741 Eden Lane. He noted that they toured the Balboa house and found it to appear normal and be well-maintained, similar to a single-family home. He stated that they support the rezoning and feel it will enhance the neighborhood. He noted that he had the same concerns as others, but he's not worried about this situation as it will have limited vehicles, there are good people involved, and he doesn't believe it would change the neighborhood.

Jenifer Luchene, 1736 Churchill Drive, expressed concern that Mary's Inn might build an addition to the house to expand their capacity beyond four women.

William R. Biver, 1320 Oeth Court, stated that he is the original applicant. He noted that some of the general statements made by neighbors were addressed in the letter he submitted. He expressed that this request is not about transient women but is specifically about pregnant women and babies who deserve to be in a family neighborhood. He stated that they are willing to let go of rezoning the vacant lot and willing to rezone the south property back to R-1 if they move. He noted this is not the same as the accessory dwelling unit application and they have no intention of renting out any space on the property. He

pointed out that maternity home falls under group home according to the previous commission who approved the rezoning on Balboa. Mr. Biver stated they are working to address all building code requirements with the city's housing department and are working through all local, state, and federal requirements for the maternity home.

John Freund concluded by reiterating Biver's statements. He expressed concern that this maternity home needs a place to go, and they feel they can fit the character of this neighborhood. He expressed that this rezoning request is very similar to the one that was approved in 2015. He noted that he had five teenagers at one time, and they generated more traffic than Mary's Inn will. He expressed that Mary's Inn is a sanctuary and will have the feel of a single-family residence.

Commissioner Norton asked how the zoning could revert to R-1 on sale. Mr. Freund expressed a willingness to do this. Staff Member Moon indicated this would be better handled through a private agreement, as the City does not tie zoning to property sales. Planning Services Director Wernimont noted the previous request for the Balboa property was a conditional rezoning that limited the uses to single-family residences. He also discussed a clause in the Memorandum of Agreement that would accompany the rezoning ordinance which would allow the city to rezone the property back to R-1 should the property owner be in violation of the conditions of the rezoning. MR. Freund stated they are willing to agree to those conditions.

Staff Member Moon detailed the staff report. She displayed two charts, the first showing that the principal permitted uses would remain the same as R-1, so no multi-family uses would be allowed with the conditional rezoning, and the second showing that the only added conditional use would be for group home. She explained that a maternity home is categorized as a group home, not a boarding or rooming house. She noted that the Conditional Use Permit request would be reviewed by the Zoning Board of Adjustment, and they can place conditions such as the number of occupants. She expressed that a memorandum of agreement would be required as part of the approval and outlined a clause in the memorandum of agreement that would allow the city to rezone the property back to R-1 should the applicant not be in compliance with the conditions of the rezoning. She noted the 2010 review was for an accessory dwelling unit, which have a very specific set of requirements, and that the request was not approved by the Zoning Board of Adjustment. She noted that the comprehensive plan encourages mixed development and separation of incompatible uses. The future land use map shows the developed lot as residential and vacant lot as park and open space, which was historically a standard designation for an undeveloped lot, which would not prohibit that lot from being developed as a single-family residence. She expressed that the property use would be limited to a single-family residence and the conditionally permitted uses, and consequently it is not anticipated to increase traffic in the neighborhood beyond a single-family use. She noted the proposed conditions would not allow conversion to multi-family apartments. She noted the Housing Department would work with the applicant on issues such as lead paint and egress. She noted the use of the carriage house as an office would be allowed as a no-impact home-based business.

Commissioner Lohrmann asked about the location of Mary's Inn on Balboa, and Staff Member Moon stated it is in a single-family neighborhood at mid-block.

Chairperson Mulligan sought clarification regarding the request and Staff Member Moon explained that the request would allow a group home as a conditional permitted use and that the principal permitted uses would be the same as allowed in the current R-1 district.

Commissioner Norton asked about how to rezone just the south lot with the house, and Staff Member Moon stated they could single that property out in their vote.

Commissioners Lohrmann and Zuccaro indicated they would vote against the request as they felt it would interfere with the integrity of the neighborhood and the neighbor's desires to maintain it.

Chairperson Mulligan expressed support of the request as it is in line with the comprehensive plan's objective of mixed uses, that the proposed rezoning would allow for single-family and not multi-family, that the project is a group home, and that the condition of the home would be addressed by building code.

Motion by Russell, seconded by Norton, to approve the rezoning of the south lot, 1749 Churchill Drive (PIN 1022379005), and with the submitted conditions. Motion carried by the following vote: Aye – Norton, Russell, and Mulligan; Nay – Lohrmann and Zuccaro.

**PUBLIC HEARING/REZONING:** Application of Cory Ranson to rezone property located at 25 Bissell Lane (PIN 1025402007 and 1025402008) from OR Office Residential to C-3 General Commercial.

Cory Ranson, 8190 Southern Hills Circle, spoke on behalf of the application. He stated they hope to build a two or three stall shop to house his plumbing business and he hopes to rent part of the building for storage.

Ray Herzog, 2717 Tiffany Court, stated that he owns neighboring property and wanted to see what the plan was for what was being developed or he could make an informed stance on the proposal. He noted that it's a small property with houses on three sides and little room for parking.

Mr. Ranson replied that there's C-3 properties adjacent to the subject property and he's thinking about a 30' x 55' shop but would need to work on the layout of the lot. He stated he'd does not anticipate much traffic to and from the site.

Staff Member Duba detailed the staff report. He noted that a letter of opposition was submitted into the record for the Commissions consideration. Mr. Duba described the characteristics of the property and the surrounding area, noting that this neighborhood has changed significantly with the construction of highways and demolition of homes. He

noted that the parcels are relatively small and that any proposed construction would have to meet site development standards.

Commissioner Lohrmann asked why a conditional rezoning was not proposed here, and Duba replied that the general policy is not to modify zoning districts unless necessary or specifically requested by an applicant. Staff Member Moon noted that the Commission could move the item forward as with conditions as well.

Commissioner Norton stated that the site plan review process will enforce the standards of the Unified Development Code and he noted that C-3 properties are adjacent, so this rezoning is legitimate in his opinion.

Motion by Norton, seconded by Zuccaro, to approve rezoning 25 Bissell Lane (PIN 1025402007 and 1025402008) as submitted. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

**PUBLIC HEARING/REZONING:** Application of Richard Sova, Landover Corporation, to rezone property located on Radford Road, PIN 1020406088 from Planned Unit Development with PC - Planned Commercial designation to OC Office Commercial.

Richard Sova, Landover Corporation, spoke on behalf of the application, stating that they request to rezone to OC in order to construct a 48-unit apartment building for which they've received funding from the Iowa Finance Authority. He stated this is like their previous project just up the road, Gardens of Dubuque.

There was no public input.

Staff Member Moon detailed the staff report. She noted they are proposing to rezone part of the parcel and leave the other with the existing PC district. She described the land uses in the area. She noted that development would include 48-units and approximately 100 parking space and the development would be subject to the city's site plan review process. She explained that Radford Road is designed to accommodate a large volume of traffic, so this development shouldn't negatively impact traffic in the area. She noted the comprehensive plan promotes a mix of uses.

Commissioner Lohrmann asked to clarify the area to be rezoned, and Staff Member Moon displayed a map showing how the parcel is anticipated to be divided.

Commissioners Lohrmann and Russell noted the close proximity to schools here as a benefit of this location.

Commissioner Norton expressed that this development would serve as a buffer and transition between the commercial areas along Radford Road and the lower-density residential areas to the east.



Motion by Russell, seconded by Zuccaro, to approve rezoning a portion of Radford Road, PIN 1020406088 as submitted. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

Commissioner Norton recused himself for the following item.

**PUBLIC HEARING/REZONING:** Application of Kim Adams, DuTrac Community Credit Union, to rezone property located at 3465 Asbury Rd from Planned Unit Development with PC - Planned Commercial designation to C-3 General Commercial.

Kim Adams, DuTrac, 3465 Asbury Road, spoke on behalf of the application, noting the PC district was created 35 years ago when the area was just residential, but it has changed with a commercial corridor now, of which they are the largest property. She expressed that most of their competitors are in C-3 districts. She noted they are completing a \$2.3 million renovation. She expressed that DuTrac is a strong financial organization, and this location is their headquarters.

There was no public input.

Staff Member Schrobilgen detailed the staff report, noting that there are residences on three sides of the property and that it is along a commercial corridor. He noted the number of uses that are allowed in the existing PUD and in C-3 districts. He described the screening that was required under the PUD, which is not part of the C-3 regulations. He noted the signage allowance would increase from the current OS allowance.

Commissioner Russell asked about the signage allowance of the PUD which uses OS, compared to C-3, and Staff Member Schrobilgen described that generally C-3 allows more and larger signs. He also discussed a previous approval for a sign variance that allowed them larger signs than is permitted in the PUD and that if the rezoning is approved, the rezoning variance would no longer be applicable or needed.

Commissioner Lohrmann asked about potential concerns of increased uses in the C-3 and the proximity to the residential, and staff confirmed additional uses are permitted in the proposed district.

Commissioner Russell expressed that it was likely zoned PC because of neighbor concerns. Commissioner Lohrmann asked why properties are typically zoned PC, and Staff Member Moon described that it's usually to allow a custom development for a property. Staff Member Schrobilgen confirmed what Commissioner Russell had stated and said that the property was vacant in 1985, surrounded by residential properties and that the PC regulations addressed neighbor opposition at that time. He reiterated that no opposition was received with the current request.

Chairperson Mulligan noted that several other recent cases on Asbury Road had attracted neighbor opposition, so the lack of comment for this request is telling.

Commissioner Lohrman expressed an interest in protecting the neighbors' views, so she proposed the condition of maintaining the existing screening requirements. Ms. Adams expressed that DuTrac would be amenable to that condition.

Motion by Lohrmann, seconded by Russell, to approve rezoning 3465 Asbury Road with the condition of maintaining the screening requirements within the existing PC district. Motion carried by the following vote: Aye – Lohrmann, Russell, Zuccaro, and Mulligan; Nay – none.

Commissioner Norton returned to the meeting.

**PUBLIC HEARING/PUD AMENDMENT:** Application of Katie Merkes, 7495 Chavenelle Road, to amend Zone C of the Dubuque Industrial Center West Planned Unit Development to allow animal hospital or clinic, kennel, and pet daycare or grooming as permitted uses.

Dr. Katie Merkes, 13167 Somerset Hills Drive, spoke in favor of the request, noting that she is a holistic veterinarian hoping to provide expanded services to help meet the growing demand for pet care in the community and would like to do so at the subject property.

There was no public input.

Staff Member Schrobilgen detailed the staff report. He noted that this property is in Zone C of the Dubuque Industrial Center West PUD, and the additional uses would only apply that area of the PUD. He expressed that this use is not anticipated to increase traffic more than the current uses allowed in zone.

Commissioner Norton expressed that this is a great addition to the industrial district, that noise is often the biggest factor and it's a perfect location next to industrial properties.

Commissioner Lohrmann noted that the Humane Society is nearby.

Motion by Norton, seconded by Lohrmann, to approve amending Zone C of the Dubuque Industrial Center West Planned Unit Development as submitted. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

**PUBLIC HEARING/TEXT AMENDMENT:** Application of Capra Bank to amend the Unified Development Code to allow Drive-Up Automatic Bank Teller as a Permitted Use in the C-3 General Commercial zoning district, as a Conditional Use in the C-4 Downtown Commercial zoning district, and to establish signage regulations for a Drive-Up Automatic Bank Teller use.

Nancy Kann, 900 Jackson Street, represented the applicant, noting the changing technology available for ATMs today and the changing way in which people use banks, namely that visits to physical banks are declining. She stated that her client is hoping to serve the market by addressing those changes and offering standalone ATMs to benefit their customers. She also noted this use can take advantage of parking lots that may be underutilized.

There was no public input.

Staff Member Schrobilgen discussed the application. He noted that the City of Dubuque currently permits this type of use as a permitted use in the industrial districts, and this text amendment would expand that to C-3 districts. He also said that the use is also already listed as a conditional use in the CR district and the request would expand that to the C-4 district as well. He noted that Conditional Use Permits have conditions placed on them and that the current condition states that the Zoning Board of Adjustment can place any reasonable condition that would mitigate impacts on the neighbors. He said this amendment would add a default condition that screening from view of adjacent residential uses would be required in addition to any the ZBA deems appropriate. He also described the proposed signage limitation of 75 square feet and 20' in height is needed to avoid these becoming small billboards. He noted that placement of any such facilities would be subject to site plan review.

Commissioner Lohrmann asked if this would include new style ATMs with video screens, and Schrobilgen confirmed that they would be included. Lohrmann expressed the need to respond to new technology and that a text amendment is the way to do that.

Motion by Zuccaro, seconded by Norton, to approve the text amendment as submitted. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

**ITEMS FROM PUBLIC:** None.

**ITEMS FROM COMMISSION:** None.

**ITEMS FROM STAFF:** None.

**ADJOURNMENT:** Motion by Russell, seconded by Zuccaro to adjourn the September 6, 2023 Zoning Advisory Commission meeting. Motion carried by the following vote: Aye – Lohrmann, Norton, Russell, Zuccaro, and Mulligan; Nay – none.

The meeting adjourned at 8:25 p.m.

Respectfully submitted,



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Shena Moon, Associate Planner

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October 4, 2023

Adopted