

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

5:30 p.m.

Thursday, November 16, 2023

City Council Chambers, Historic Federal Building

Board Members Present: Vice Chairperson Keith Ahlvin, Board Members Gwen Kosel, Rena Stierman and Matt Mauss.

Board Members Excused: Chairperson Jonathan McCoy

Board Members Unexcused: None.

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

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

MINUTES: Motion by Mauss, seconded by Kosel, to approve the minutes of the November 2, 2023 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Kosel, Mauss, Stierman and Ahlvin; Nay – None.

DOCKET – 43-23: Application of Tim Mueller, 2901 Hillcrest Road, to allow a detached accessory dwelling unit in an R-1 Single-Family Residential zoning district.

Board Member Stierman recused herself from the meeting.

Tim Mueller, 2901 Hillcrest Road, spoke in favor of the request. He explained that there was a unit present when he bought the property 32 years ago and has made many improvements to the property. He described some of the work he's done on the barn structure over the years and noted that he has applied for permits as necessary. He displayed pictures of an upstairs area he spends most of his time in and then discussed the recently renovated downstairs living space that he intends to continue using as a rental unit. He noted he has a paved parking area and planted arbor vitae as a screen to the south. He reiterated that he uses the upstairs as a personal space and rents out the downstairs. He referred to a Dubuque housing needs report and stated that additional units are needed. He described some remaining work he had to complete in order to obtain a rental license. He requested the Board grant him a Conditional Use Permit.

Bob Renne, 1950 Avalon Road, expressed opposition to the request and said it would not be an advantage to people in the neighborhood. He referred to the letter that he submitted to the Board. He referred to the criteria for approving a Conditional Use Permit and said that the applicant had not met those criteria. He said the owner had not obtained proper

permits and inspections and had not completed some of the construction work including siding the barn. He expressed concern about the people who might rent the property and that they might have pets to add to those already in the area. He noted that there is a children's park adjacent to this property and that a rental unit would allow unknown people on the property. He expressed that this use is not in harmony or character with the neighborhood. He stated that he spoke with three realtors who said that such a property use would diminish the value of properties in the vicinity. He requested that the illegal rental be stopped until permits are approved, and the property meets code.

Nick Breitfelder, 2005 Broadlawn Road, expressed support for the request, stating that he doesn't see any issues with the request and that he has not seen negative changes in the area from the subject property. He expressed that he doesn't think most people would be concerned with the proposed accessory dwelling unit.

Mary Parkin, 1990 Avalon Road, stated that she is direct neighbors with the applicant across her backyard. She expressed that she loved what he has done with the property, loves the tenant's dogs, and doesn't see any problem with the rental use. She noted medical professionals are already vetted by the hospital and would be fine neighbors.

Mr. Mueller responded by stating that Mr. Renne has a personal complaint against him as he is married to his ex-wife. He explained that it's a one-bedroom unit that sleeps two and is listed through the Furnished Finders website, which caters to traveling professionals, typically with a 60- to 90-day stay. He stated that people find it challenging to find this temporary type of accommodation.

Staff Member Schrobilgen clarified that the upper floor of the barn is not part of the request. He then detailed the staff report describing the neighborhood and area around the subject property. He listed the requirements of an Accessory Dwelling Unit per Chapter 8-5.10(1) of the UDC. He highlighted that the unit has ample parking and exceeded the three-space requirement, that the lot was larger than other residential lots in the neighborhood, and the nearest neighbor's property line was 55' away with the furthest being over 100' away. He noted that screening was installed along the south property line, and that the total size of the unit was 600 sq. ft. in gross area. He noted that the unit meets all the requirements listed for a Conditional Use Permit, except for the final approval of a rental license and the associated building permits, which the applicant is actively seeking to acquire. He recommended the Board review the criteria for approval.

Board Member Mauss sought clarification from Mr. Renne regarding his conversations with realtors indicating this type of use would hurt property values. Mr. Renne stated the realtors said it will have a diminishing effect, but how much is unknown. He expressed concern that rentals will spread in the area and referred to recent controversy with proposed zoning changes on Churchill Drive. Board Member Kosel, a realtor, expressed that neighbors who have rental space behind them may experience some decrease in value or at minimum an increase in the number of days on the market.

Board Member Kosel noted that, if granted, the permit would remain with the property in

perpetuity, so she asked about ways to limit its use. Staff Member Schrobilgen stated that it would be an Accessory Dwelling Unit, so it could be rented on a short-term or long-term basis, and that it would need to come before the Board if it were to increase in footprint or change substantially in any other way. Board Member Kosel asked about limiting it to one level, and Staff Member Schrobilgen stated that it is limited both by the proposal and the 600 sq. ft. maximum size. He said that increasing the square footage in any way, would require the applicant to come before the Board and added that since the applicant is at the maximum of 600 sq. ft., any expansion would also need a special exception.

Staff Member Schrobilgen noted a petition from Mr. Renne and displayed a map of properties providing public input. The map showed two properties in opposition and two properties in support. He also noted that a third property owner spoke in support of the request and noted their property location on the map.

Vice Chairperson Ahlvin asked if state law prevents regulating short-term rentals, and Associate Planner Moon replied yes.

Vice Chairperson Ahlvin noted the public input is somewhat even between support and opposition, so he expressed that he's on the fence. He expressed that it doesn't seem like there's enough support for the request from other Board members and presented Mr. Mueller the option to table the review to a future meeting when a full Board was present. Mr. Mueller requested to table his request to a future meeting.

Motion by Mauss, seconded by Kosel, to table the docket item at the applicant's request. Motion carried by the following vote: Aye – Kosel, Mauss and Ahlvin; Nay – None.

Vice Chairperson Ahlvin sought confirmation from staff as to whether the materials and public input presented would be part of the next hearing, and Staff Member Schrobilgen noted that the minutes will be public record and any support or opposition would be noted and provided at a future meeting.

Board Member Stierman returned to the meeting.

DOCKET – 44-23: Application of Lance Marting, 360 Mississippi View Drive to construct a garage addition totaling 1,450 square feet of detached accessory structures and 12' from the front property where 1,000 square feet maximum is permitted and 20' minimum is required in an R-1 Single-Family Residential zoning district.

Lance Marting, 360 Mississippi View Drive, spoke in favor of the request. He noted that he grew up there and built a new house when he bought the property from his parents. He explained that he's asking to build an 18' addition to the west side of the garage. He stated that he spoke with the neighbors, and they approved of the plan. He noted the use is personal, not commercial. He stated the addition wouldn't affect anyone's view.

There was no public input.

Staff Member Schrobilgen detailed the staff report, explaining that the applicant is seeking to build an addition on the detached garage. He noted that it would be 12' from the front property line. He pointed out that the existing utility easements and down-sloping topography has pushed development closer to the road for all the properties on the east side of the street. He noted that this is not a through street and there is no sidewalk, so the reduced front yard setback shouldn't negatively impact public safety or use and enjoyment. He stated that no public input was received, and that the applicant would still need to get a building permit.

The Board had no questions or comments.

Motion by Mauss, seconded by Kosel, to approve the request as submitted. Motion carried by the following vote: Aye – Kosel, Mauss, Stierman and Ahlvin; Nay – None.

DOCKET – 45-23: Application of Trent Kastenschmidt, Seippel Road and Airborne Road, to install a freestanding sign 105' in height where 40' maximum height is permitted in a C-3 General Commercial zoning district.

Trent Kastenschmidt, Kwik Trip, 1626 Oak St, La Crosse, Wisconsin, spoke in favor of the request. He explained that they are requesting a 105' sign to attract traffic from Highway 20. He explained that they tested three heights to get around the topography because the property sits in bowl, and the nearby hills would block view of it.

Matthew Lepke, Kwik Trip, 1626 Oak Street, La Crosse, Wisconsin, spoke in favor of the request. He stated that he worked as a planner before managing signs for Kwik Star. He noted that the site conditions here are unique. He explained that they engaged a professional sign surveyor who flew a blimp at three different heights and then drove by it to determine visibility for a site. He explained that Kwik Star investigated other signage means with Iowa Department of Transportation (IDOT), and they said that neither an off-premise sign nor a blue information sign would be options here. He stated that without those options, and based on the analysis of the sign surveyor, they are requesting the 105' height, which they feel is the minimum necessary. He stated they are considering this from the safety perspective of having time to safely exit the highway. He expressed that they are doing the best they can not to loom over the highway at this difficult site. He played a video from the sign surveyor and described the view from a vehicle travelling west on Highway 20 of a test blimp floating at 105' in height in the proposed sign location.

Nick Haefs, Kwik Trip, 1626 Oak St, La Crosse, Wisconsin, spoke in favor of the request. He discussed the importance of signage in helping their truck drivers find properties because IDOT laws prevent the use of phones while driving, and the sign is especially important for non-local traffic. He noted that heavy trucks need plenty of time to exit the highway safely.

Troy Mleziva, Kwik Trip, 1626 Oak St, La Crosse, Wisconsin, spoke in favor of the request. He spoke to the criteria for approving a variance:

- He noted the conditions here create a disadvantage for this property, as this site

sits on a low spot, and it is 1000' from the travel lane of Highway 20, whereas the Devon Drive Kwik Star is 60' from the travel lane.

- He stated the sign meets every other element of the sign code.
- He expressed that the site's disadvantage was not created by the owner, that it's based on topography.
- He expressed that this variance would not grant them a special privilege because this property is unique in that other properties do not have this topography. He noted that cost of this sign is expensive, so they feel there won't be a plethora of other such signs.
- He expressed that granting this variance would not have an adverse effect on the landfill, industrial park, or the broader public interest.

Dan McDonald, Greater Dubuque Development Corporation, 900 Jackson Street, spoke in favor of the application. He stated that he believes Kwik Star's application meets the variance criteria. He noted that while GDDC is not affiliated with the applicant, they applaud the investment within Dubuque.

Staff Member Duba detailed the staff report noting the challenging topography preventing view of the site from Highway 20. He referred to the applicant's analysis demonstrating the viability of a 105' sign. He expressed the potential safety concerns that could arise for motorists trying to exit the highway toward the gas station without enough time to prepare to do so safely. He expressed that granting the variance should not have an adverse impact on the surrounding properties.

Board Member Mauss asked what the view of the sign would be like for residential neighbors on Cousins Road to the north. Mr. Lepke stated that the sign would be oriented perpendicular to Highway 20, so it would be slanted about 30 degrees when looking at it from the homes. Google maps was used to show the view from those homes and he stated that the sign dims at night. Mr. Lepke concluded that because of those reasons the sign shouldn't affect those homes.

Board Member Mauss asked if it would be a fixed sign as opposed to a not a video sign and Mr. Lepke replied that yes, it would have a solid face with no dynamic content.

Board Member Kosel stated she was on Cousins Road recently and doesn't think the sign should be a problem there.

Vice Chairperson Ahlvin expressed that the disadvantage exists because the applicant chose a site that is 1000' from the highway. He added that it would be difficult to determine at what distance there is a hardship and whether that distance could even be considered a disadvantage.

Motion by Mauss, seconded by Kosel, to approve the request as submitted. Motion carried by the following vote: Aye – Kosel, Mauss and Stierman; Nay – Ahlvin, citing Criteria 3: *This disadvantage does not exist because of conditions created by the owner*

or previous owners of the property.

DOCKET – 46-23: Application of John and Stephanie Ottavi, 2940 Spring Oaks Court to construct a 960 square foot ground mounted solar array 15' in height and totaling 1,896 square feet of detached accessory structures where 100 square feet, 10' in height, and 1,000 square feet maximum is permitted in an R-1 Single-Family Residential zoning district.

Pat Norton, Buesing & Associates, 1212 Locust Street, spoke in favor of the request. He explained that the property owner would like to construct a solar array and the location is tucked down to minimize impact on adjacent properties. He displayed pictures of the site and explained that it's far from other properties and close to wooded areas. He noted the property owner just wants to use the panels to power their home.

There was no public input.

Staff Member Schrobilgen detailed the staff report noting the UDC's allowance for solar arrays and the dimensions of the proposed solar array. He suggested the Board ask for clarification on the height of the array as the application notes 14.58' and the plan shows 9.27'. He stated that this is a residential neighborhood, that there is substantial separation from neighboring properties, a topographic change, and large trees surrounding a portion of the array. He stated there were no health and safety concerns, and the Fire Marshall reviewed the request and had no fire safety concerns.

Staff Member Schrobilgen read an email submitted by the neighbor at 3032 Spring Oaks Ct. which had questions and feedback about the project but was neither in support nor opposition. He also noted that there were several phone calls seeking information about it, but no formal or stated support or opposition.

Board Member Stierman asked if anyone would be able to see the array. John Ottavi, the property owner, explained that they are trying to make it not visible from his house, which has the best view. He said it is set down low over the hill and behind trees for the neighbors. Board Member Stierman asked if it would be visible when the leaves fall and Mr. Ottavi expressed that it shouldn't be, because they're setting it as low as possible.

Board Member Stierman asked about the height of the array, and Mr. Norton confirmed that it would be 9.27' high perpendicular from the ground.

Board Member Mauss asked if they could add a condition requiring screening but only if the neighbor complains about the array. Staff Member Schrobilgen and Staff Member Moon both expressed that such a condition would be difficult to enforce and it's more practical to condition screening vegetation at the outset versus upon a subjective review after installation. Mr. Ottavi stated that they would be willing to add vegetative screening if the Board determined it were necessary. Vice Chairperson Ahlvin expressed that since the array is 25' lower than the property line, he is not concerned about screening, and that it may not be practical as they would have to cover a very large area with screening for it to be effective.

Motion by Mauss, seconded by Stierman, to approve the request as submitted. Motion carried by the following vote: Aye – Kosel, Mauss, Stierman and Ahlvin; Nay – None.

DOCKET – 47-23: Application of Patrick Norton, Buesing & Associates, 781 Locust Street to allow encroachments into three visibility triangles, to cover 70% of the lot with structures, and to have 15% permeable area, where 50% maximum coverage is permitted and 20% permeable area is required in a C-4 Downtown Commercial zoning district.

Patrick Norton, Buesing & Associates, 1212 Locust Street, spoke in favor of the request. He noted that Andy Butler intended to be here but a conflict arise and so he was unable to attend. He explained that the application is for a proposed childcare facility to be located at 781 Locust Street, which is currently the location of the Knights of Columbus Hall, and that it requires variances for three items including:

1. The 0' setback of the property creates visibility triangle encroachments at the exit from the alley and at the entrance from Locust Street.
2. He noted structures will cover about 68% of the lot with structures.
3. He noted they would have about 18% permeable area and compared that to zero permeable area currently available, noting that they would have more greenspace than required by the State of Iowa for childcare facilities.

Benjamin Beard AIA, Straka Johnson Architects, 3555 Digital Drive, expressed that they are trying to serve as many kids as possible. He explained that they are using angled parking to minimize the parking lot area.

Dan McDonald, Greater Dubuque Development Corporation, 900 Jackson Street, spoke in favor of the application. He noted that GDDC is affiliated with this project. He expressed that the site would be improved with this project, and that Cottingham & Butler is a meticulous building owner. He expressed that childcare is critically needed, and it's difficult to operate a childcare center. He expressed that it would be easier to do this type of project on a greenfield site, but this is downtown, with unique circumstances.

Vice Chairperson Ahlvin noted two letters of support, one from Andy Butler and one from Gary Stoppleman.

Staff Member Moon detailed the staff report, noting that the applicant is looking to redevelop the property and make a childcare center, and that this project is part of a larger block of redevelopment. She noted the request has some buffer room for coverage and permeable area built in, and that the current site is fully covered with a building and two parking lots. She described the childcare center's plan to serve up to 182 children, infant through pre-K. She noted the on-site parking, which is not required in the C-4 district but is proposed by the applicant to manage the drop-off and pick-up traffic. She described the visibility triangle encroachments created by the support pillars and noted that the 8th street intersection is a fully controlled and lighted intersection, and that Locust Street is one-way which both help to minimize the encroachments impact. She noted that the requested lot coverage of 70% is higher than the 50% allowed, but that it has an overhanging second floor and that it's not uncommon for downtown buildings to cover the

full lot to maximize use of property. She explained that the proposed permeable area is less than required but it is an increase from the current site conditions which has no permeable area. She noted that there has been preliminary review with the applicant and City's Development Review Team to review the site layout and traffic flows. She noted the applicant has been in touch with Transportation Services about utilizing parking spots along 8th Street and Locust Street during certain hours for pick-up/drop-off.

Board Member Mauss noted that the support pillars only block fractions of the visibility triangle, and that the greenspace is an improvement from current conditions.

Motion by Mauss, seconded by Stierman, to approve the request as submitted. Motion carried by the following vote: Aye – Kosel, Mauss, Stierman and Ahlvin; Nay – None.

ITEMS FROM PUBLIC: None.

ITEMS FROM BOARD: The Board asked what happens when items are tabled and whether there is a limit regarding the length of time to come back before the Board. Staff noted that it is case specific, pointing out that some applicants return the following month, some require more time to address comments from the Board, and others may never return for one reason or another. They also noted that if the request is part of an enforcement case that there is a limit to the timeline and that ultimately any violation needs to be brought into compliance.

ITEMS FROM STAFF: None.

ADJOURNMENT: Motion by Ahlvin, seconded by Mauss, to adjourn the November 16, 2023 Zoning Board of Adjustment meeting. Motion carried by the following vote: Aye – Kosel, Mauss, Stierman and Ahlvin; Nay – None

The meeting adjourned at 7:09 p.m.

Respectfully submitted,



Sheha Moon, Associate Planner

December 14, 2023

Adopted