



Approved

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

4:00 p.m.

Thursday, July 22, 2010

City Council Chamber, Historic Federal Building

**Board Members Present:** Chairperson Mike Ruden; Board Members Randy Klauer, Jeff Cremer and Bill Gibbs; Staff Members Wally Wernimont and Guy Hemenway.

**Board Members Excused:** Board Member Heath Hutchinson.

**AFFIDAVIT OF COMPLIANCE:** Staff presented an Affidavit of Compliance verifying the meeting was being held in compliance with the Iowa Open Meetings Law.

**CALL TO ORDER:** The meeting was called to order by Chairperson Ruden at 4:00 p.m.

**MINUTES:** The minutes of the June 24, 2010, meeting were approved unanimously, as submitted.

**SPECIAL EXCEPTIONS**

**DOCKET 31-10:** Application of Bruce Freiburger (rehearing from June 24, 2010) for a special exception for property located at 622 E. 22<sup>nd</sup> Street to build a 14 foot by 26 foot detached garage 7 feet from the west property line (22<sup>nd</sup> Street) and 2 feet from the north property line (Windsor Street), 10 feet required for both setbacks, and to cover 67% of the lot with structure, 50% maximum allowed, in an R-2A Alternate Two-Family Residential zoning district.

Bruce Freiburger, 622 E. 22<sup>nd</sup> Street, explained his request to the Board. He noted the location of the property lines in relation to the surrounding streets. He said that the proposed detached garage will be located outside of the visibility triangle. He said that the front of the garage will meet the setback along Providence Street. The Board asked him about the existing garage on his lot. He explained that the garage is too small for a vehicle and currently is being used for storage.

Staff Member Hemenway distributed an aerial view of the site. Mr. Freiburger explained that parking is a premium in the neighborhood. He said that he has two vehicles and that he needs to park one of his vehicles at his son's house because there is not a lot of parking available in the neighborhood.

Board Member Klauer noted that at the previous meeting Mr. Freiburger indicated the garage was going to be used as a workshop. Mr. Freiburger said that the garage would

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be used for parking and a home workshop. He explained that currently he stores his tools in his house.

Board Member Gibbs asked if the garage can be moved toward Providence Street. Mr. Freiburger said that he can move the garage closer to Providence Street. He explained that he would like to keep the garage in line with the front of his house along E. 22<sup>nd</sup> Street. He said that this is the reason that he did not place it closer to Providence Street.

Mike Wienen, 2115 Windsor, spoke in opposition to the request. He said that he has issues with the proposed detached garage blocking visibility at the intersection of Providence Street and Windsor Avenue.

The Board discussed the street configuration and sight visibility for vehicular traffic.

Staff Member Hemenway distributed a street layout map to the Board. Board Member Gibbs asked Mr. Wienen about the location of his house in respect to the property line along Providence Street and Windsor Avenue. Mr. Wienen said that his house is located very close to the sidewalk along Windsor Avenue.

Mr. Freiburger explained that the proposed detached garage is going to be located over 29 feet from the traveled portion of Providence Street. He said that there is a controlled intersection at Windsor Avenue and 22<sup>nd</sup> Street.

Staff Member Hemenway presented the staff report. He explained that the request is to waive setbacks to property lines and to exceed the maximum permitted lot coverage. He referred to the site diagram that was provided by Mr. Freiburger. He explained that the depth of the garage may not exceed 23 feet because, after setbacks are considered, the lot will not accommodate a 26 foot deep garage. He said that the garage will be located outside of the visibility triangles of Windsor Avenue, E. 22<sup>nd</sup> Street and Providence Streets. He said that the City's Engineering Department will need to review and approve the driveway access and curb cut. He referred to a letter of opposition that he said was included in the Board's packet.

Chairperson Ruden asked about the service level of the street. Staff Member Hemenway explained that Windsor Avenue is classified as a minor arterial, E. 22<sup>nd</sup> Street is a collector street, and Providence Street is a local street. Chairperson Ruden asked if the size of the visibility triangle changes with the level of service of the road.

Staff indicated that the visibility triangle does not change with the level of service of the road.

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The Board discussed safety and visibility at the intersection. Chairperson Ruden said he is concerned with the visibility for vehicles turning onto Windsor Avenue from 22<sup>nd</sup> Street. He said that they may not have the ability to see the vehicles existing from Providence Street onto Windsor Avenue.

Board Member Cremer said that the detached garage would be located outside of the visibility triangles of the intersections.

Board Member Gibbs said that he has concerns with the location of the garage as it effects traffic safety.

Chairperson Ruden said that he felt that the application does not meet the requirements for granting a special exception.

Motion by Klauer, seconded by Cremer, to approve the special exception request. Motion denied by the following vote: Aye – Cremer; Nay – Klauer, Gibbs and Ruden.

**DOCKET 34-10:** Application of Jan Scott for a special exception for property located at 857 Elaine Court to build an attached garage/addition 9 feet from the front property line (Barbara Lee), 20 feet required, in an R-1 Single-Family Residential zoning district.

Jan Scott, 857 Elaine Court, said that he lives at the intersection of Elaine Court and Barbara Lee. He said that his existing garage and the proposed garage will both face Barbara Lee. He said that he has spoken with five of the six adjacent property owners. He said that he cannot contact one of the neighbors who he said is on an extended vacation.

Staff Member Hemenway distributed photos of the site to the Board.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report. He noted the garage location. He distributed a full set of plans for the garage and addition to the Board. He said that he has not received any input from the adjacent property owners. He discussed distances from the garage to the sidewalks as it relates to vehicles parking in the driveway.

Board Members discussed the request and felt that it was appropriate.

Motion by Klauer, seconded by Cremer, to approve the special exception. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**VARIANCES**

**DOCKET 35-10:** Application of Brian Kane/Ennable Manor Care Center Inc. for a variance for property located at 2000 Pasadena Drive to allow a nursing home to remain 16 feet 9 inches from the south side property line, 20 feet required, in an R-3 Moderate Density Multi-Family Residential zoning district.

The Board decided to hear Dockets 35-10 and 36-10 simultaneously and to vote on them separately.

Joe Kane, Kane, Norby and Reddick, explained that he is the attorney representing Ennable Manor Care Center Inc. He said that the existing building has been at its present location for 35 years and that the encroachment was discovered during an ALTA survey. He said that he is requesting approval for the setback variance retroactively rather than having to remove a portion of the building. He said that he is also requesting a variance in parking rather than reducing staff levels or removing a number of beds from the facility in order to meet the off-street parking requirement. He said that the current parking lot configuration has been in place for 35 years.

Eleanor Lang, 3159 Erie Court, spoke in opposition to the request. She said that over the years she has complained about Ennable Manor Care Center to the City regarding weeds growing on the property. She said that Ennable Manor does not respond in a timely manner and does the bare minimum of maintenance on the site. She said in the past she has complained about storm water runoff from the building.

John Luikens, 3154 Erie Court, raised questions about easements located along the property line.

Mr. Kane said that the comments that were offered do not affect the nature of the request. He referred to the staff reports submitted to the Board.

Staff Member Wernimont outlined the staff report and provided photographs of the site to the Board. He explained that the applicant is seeking approval for setbacks and a parking variance. He noted that there are natural springs located throughout the neighborhood and discussed storm water management from the site. He explained that in order for the facility to meet the off-street parking requirements they would have to either reduce the number of employees, the number of beds or expand the parking lot. He explained that there is a handicap ramp that is located closer than 16 feet 9 inches to the property line and that it is exempt from setbacks for ingress and egress to and from the facility.

Chairperson Ruden said that they need to review the request as if the facility has not been built. Board Member Klauer explained that this request does not represent an

expansion of the existing facility. He said that he feels the request meets the requirements of granting a variance for setbacks and off-street parking.

Motion by Klauer, seconded by Cremer, to approve Docket 35-10, as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay- None.

**DOCKET 36-10:** Application of Brian Kane/Ennable Manor Care Center Inc. for a variance for property located at 2000 Pasadena Drive to allow a nursing home with a deficit of 18 off-street parking spaces to remain in an R-3 Moderate Density Multi-Family Residential zoning district.

The Board heard this discussion simultaneously with Docket 35-10.

Motion by Klauer, seconded by Cremer, to approve Docket 36-10 as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 37-10:** Application of Robert Devereaux for a variance for property located at 2850 Burlington Street to open a beauty salon with a deficit of 6 off-street parking spaces in a C-1 Neighborhood Commercial zoning district.

Robert Devereaux outlined the variance request for the Board. He discussed the lot layout and building configuration. He explained that there is no additional space for off-street parking on the site. He discussed the former uses of the property. He said that the subject building is configured as a commercial structure. He discussed available on-street parking throughout the neighborhood. He said that the commercial space will be used as a barber/beauty salon for one chair, with the possibility of adding a chair in the future.

Staff Member Wernimont distributed an aerial photo and photos of the site to the Board.

Barbara Scholl, 2855 Burlington Street, said that she represents neighbors in the area. She spoke in opposition to the request expressing concerns with on-street parking. She discussed the history of the property and its former uses. She said that there has been a lack of property maintenance over the years. She referred to a letter of opposition and a petition signed by the neighbors in opposition to the request. She said she has concerns with property values in the immediate area.

Tom Scholl, 2655 Burlington Street, discussed the property history. He spoke in opposition with concerns related to traffic and parking.

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Robert Devereaux rebutted the comments. He said he purchased the property with a commercial development in mind. He explained that he is trying to revitalize the property for business use.

Staff Member Wernimont outlined the property history including the redevelopment of an adjacent parking lot formerly associated with the subject property. He said that the parking lot that was associated with the building now accommodates a duplex and detached garages. He said that the previous property owner had paved 5 off-street parking spaces at 2850 Burlington Street in order to allow the apartment complex to remain. He noted the submission of letters of opposition from the neighbors that were included in the packets. He clarified the required off-street for the facility.

The Board discussed the request and expressed concerns with potential uses for the property. Staff Member Wernimont reviewed the permitted uses in a C-1 Neighborhood Commercial zoning district. The Board asked Mr. Devereaux about the sale of the property to the barber/beauty shop owner. He said that it is possible that the building would be sold to the barber/beauty shop owner.

The Board discussed limiting the use of the property to only a barber/beauty shop. They directed staff to contact legal staff to see if this is a possibility.

Motion by Klauer, seconded by Gibbs, to table the request to the August 26, 2010 Zoning Board of Adjustment meeting and to direct staff to seek a legal opinion regarding limiting the number of uses in the C-1 District for the parking variance. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**CONDITIONAL USE PERMITS:**

**DOCKET 38-10:** Application of Jeff & Ann Cremer for a conditional use permit for property located at 801 Rhomberg Avenue to open a chiropractic office in an C-1 Neighborhood Commercial zoning district.

Jeff Cremer removed himself from the table.

Jeff Cremer, 919 ½ Bluff Street, explained the conditional use request for his property at 801 Rhomberg Avenue. He said that the building will be used for a chiropractic office

Karla Kloft said that she is a Franciscan Sister at Stonehill. She said that currently she operates a chiropractic business at Stonehill Community Center and that she is being relocated from the site because of improvements to Stonehill.

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Erica Hess, 804 Lincoln Avenue, spoke in favor of the request.

Jeff Cremer explained that the building has been used by a chiropractor in the past. He said that the building is currently being used for storage for his grocery store.

Staff Member Hemenway presented the staff report. He said that the property is zoned C-1 Neighborhood Commercial and that, according to the application, the site will be redeveloped for use by one chiropractor with one staff support person. He explained that there is off-street parking available on the site. He said that staff recommends that the parking lot be striped. He said that all of the adjacent property owners within 200 feet of the property have been notified of the proposed request.

Motion by Klauer, seconded by Gibbs, to approve the conditional use permit. Motion carried by the following vote: Aye – Klauer, Gibbs and Ruden; Nay – None; Abstain – Cremer.

**ADJOURNMENT:** The meeting adjourned at 5:45 p.m.

Respectfully submitted,



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Guy Hemenway, Assistant Planner

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Adopted—August 26, 2010