



Approved

## MINUTES

### CITY OF DUBUQUE ZONING BOARD OF ADJUSTMENT REGULAR SESSION

4:00 p.m.

Thursday, May 26, 2011

City Council Chamber, Historic Federal Building

**Board Members Present:** Vice-Chairperson Randy Klauer; Board Members Jeff Cremer, Bill Gibbs and Heath Hutchinson; Staff Members Guy Hemenway and Wally Wernimont.

**Board Members Excused:** Chairperson Mike Ruden.

**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 Vice-Chairperson Klauer at 4:05 p.m.

**MINUTES:** Motion by Gibbs, seconded by Cremer to approve the minutes of the April 28, 2011 meeting. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

### **VARIANCES:**

**DOCKET 31-11:** Application of Dave Kluck / Dave Scmitt, Dubuque Sign Co. for a variance for property located at 30 Main Street to install a wall mounted sign with a 72 inch projection, 18 inches maximum permitted, in a C-3 General Commercial zoning district.

Keith Wolff, Dubuque Sign, said he represented Dave Schmitt of Easy Street and Dave Kluck. He explained that there is not a lot of wall area to accommodate a wall-mounted sign. He said that the sign will be lighted to help make it more visible at night.

Vice-Chairperson Klauer asked about other signage on the building. Mr. Wolff noted that there is a non-illuminated panel located on the north side of the building facing Highway 151/61/52.

Staff Member Hemenway explained the sign requirements for the C-3 General Commercial zoning district. He noted the location of other C-3 zoning districts in the

City. He said that C-3 zoning is typically located along major arterials with highway oriented businesses. He explained that businesses in a C-3 District typically have their buildings set back away from the roadway with a parking lot located in front. He said that this is a unique situation in which the existing building is located very close to the front property line. He said that the Board has the ability to place a condition that no more wall-mounted or free-standing signs be allowed on the site as a condition of the variance.

No one spoke in opposition to the request.

Motion by Gibbs, seconded by Cremer, to approve the sign variance, as submitted.  
Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

### **SPECIAL EXCEPTIONS**

**DOCKET 25-11:** Application of Martin Robinson for a special exception for property located at 2214 Hoyt Street to build a 24 foot by 24 foot attached garage, 2 feet from the front property line, 20 feet required, in an R-1 Single-Family Residential zoning district.

Martin Robinson outlined his request to the Board. He said that he wants to park his vehicles off of the street and to improve traffic flow through the neighborhood. He said he wants to expand an existing single-car garage to accommodate a second vehicle. He described the design of the garage.

Vice-Chairperson Klauer asked about the proximity of the garage to the retaining wall. Mr. Robinson said that the garage will be back a little bit from the front of the retaining wall. He said that the original garage will be used for storage of lawn mowing and snow blowing equipment. The Board and applicant discussed the distance from the street to the garage.

Staff Member Wernimont distributed photos of the site. He noted that Hoyt Street is a one block dead-end street. He said that he has not received any input from the adjacent property owners regarding the request. He said that the location of the garage will not impact visibility to the sidewalk and street from the adjacent properties.

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

**DOCKET 26-11:** Application of Edward & Johanna Boettner for a special exception for property located at 2065 N. Grandview Avenue to build a three-season room 1 foot 6 inches from the rear property line, 20 feet required, in an R-1 Single-Family Residential zoning district.

Ed Boettner, 2065 N. Grandview Avenue, outlined his request to the Board. Board Member Gibbs asked for clarification of the building design. Mr. Boettner discussed the building design and the surrounding property layout.

Board Member Gibbs noted that the porch would not impact the neighbors' property due to the lot configuration. Vice-Chairperson Klauer noted that Mr. Boettner must clearly demonstrate to the Building official the location of the property line. Mr. Boettner said that he has found the property pins and has a copy of the original plat. Mr. Boettner said that he has spoken with neighbors and said that they expressed no concern over the proposed three-season addition.

Staff Member Wernimont distributed photos of the site to the Board. He reiterated the special exception request. He described the history of the subdivision and how the subject lot was created. He explained that the lot has a very shallow depth because of the subdivision of a larger lot.

Motion by Gibbs, seconded by Hutchinson, to approve the special exception, with the recommendation that the owner clearly demonstrate the lot line location to the Building official or obtain a survey. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 27-11:** Application of James & JoAnn Weitz for a special exception for property located at 1875 Hummingbird Drive to build a storage shed 0 feet from the rear property line and 0 feet from the west side property line, 6 feet required for both setbacks, in an R-1 Single-Family Residential zoning district.

Jim Weitz, 1875 Hummingbird Drive, said he is proposing to build a 10 foot by 10 foot shed on a 12 foot by 12 foot platform. He said that he currently maintains the property between his rear fence and the creek. He showed photos of the creek illustrating various degrees of maintenance of properties along the creek.

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

Vice-Chairperson Klauer asked about the location of the property line. Mr. Weitz said that he had Steve Fuerst help him locate the property line. He said that the fence is located on the property line.

The Board and applicant discussed the location of the property line.

Mr. Weitz noted that the shed will be a plastic store bought shed. Board Member Gibbs asked about the possibility of moving the shed in two feet from both property lines. Mr. Weitz said that it could be done; however, he wants to have more of the yard available. He did not want to deal with maintenance of the two feet of lot area around the platform.

Greg Wollmuth, 1885 North Court, said that he does not have a problem with the location of the shed if a survey is obtained. He said that he thought that the creek is the property line.

The Board noted that it appears that the property line is actually on the other side of the creek.

Mr. Weitz and Mr. Wollmuth approached the table and referred to some photographs of the site. The Board discussed with Mr. Wollmuth and Mr. Weitz the location of the rear property line. Mr. Weitz noted that the fence is located close to the rear property line.

Staff Member Hemenway reiterated the request. He explained that the Board has the ability to require a survey. He said that the Board can look at the value of the structure and the cost to incur a survey. He explained that a prefab vinyl shed can easily be removed as opposed to a building addition. He recommended that a survey be obtained or that the applicant clearly demonstrate to the building official the location of the property line.

Motion by Gibbs, seconded by Cremer, to approve the special exception request, with the condition that the applicant obtain a survey or clearly demonstrate to the building official the location of the property line by finding the property pins. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**CONDITIONAL USE PERMITS:**

**DOCKET 28-11:** Application of Operation: New View Community Action Agency / City of Dubuque for a conditional use permit for property located at 1805 Central Avenue to open a licensed child care center with 31 children and 6 employees on the maximum shift, in a C-4 Downtown Commercial zoning district.

Tom Stovall, Executive Director of Operation New View, introduced Peggy Hanniford and discussed the conversion of the first floor of the former City Housing Services Department to a licensed child care center. He explained that the child care facility will

have a maximum of 31 kids and 6 employees. He said that they are required to obtain a license with the State to operate a child care center.

Vice-Chairperson Klauer questioned the play area location and potential parking issues.

Staff Member Wernimont distributed photos of the site. He outlined the request noting that a State license is required and said that there is adequate off-street parking and drop-off area for the proposed licensed child care center.

Motion by Gibbs, seconded by Hutchinson, to approve the conditional use permit, as submitted. Motion approved by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 29-11:** Application of Daniel McNamer for a conditional use permit for property located at 1867 Phyllrich Drive to allow a home-based firearms mail order and repair business in an R-1 Single-Family Residential zoning district.

Daniel McNamer, 1867 Phyllrich Drive, said that he would like to start a home-based business selling firearms. He said that he will only have his guns in the home—not gun powder or munitions. He said that a majority of the business will be done online. He explained that he needs to comply with Federal Firearms requirements to obtain a dealer's license.

Staff Member Hemenway distributed photos of the site to the Board. Vice-Chairperson Klauer referred to two letters of opposition that were included in the packet. The Board reviewed the letters of opposition.

Staff Member Hemenway presented the staff report. He explained that Mr. McNamer is proposing to open a mail order firearms sale and firearms/repair business. He explained that the property needs to meet the requirements for a home-based business in order to obtain a conditional use permit. He said that the property is located in a residential parking permit district. He said that this will limit customer parking in the neighborhood. He recommended that the Board review the criteria for granting a conditional use permit.

Vice-Chairperson Klauer said that the Board can limit the hours of operation. He discussed limiting on-site business activities between 8:00 a.m. and 5:00 p.m. The Board discussed hours of operation for the business. They discussed limiting the hours between 8:00 a.m. and 6:00 p.m.

Staff Member Hemenway explained that the application noted that contact on site would be by appointment only.

Motion by Gibbs, seconded by Hutchinson, to approve the conditional use permit with the condition that hours of operation be from 8:00 a.m. to 6:00 p.m. for the delivery, pickup and service of firearms on site. Motion carried by the following vote: Aye – Klauer, Cremer and Hutchinson; Nay – Gibbs.

**DOCKET 30-11:** Application of Matthew & Ginger VanderBroek for a conditional use permit for property located at 1865 Horizon Court to keep 4 hens in an R-1 Single-Family Residential zoning district.

Ginger VanderBroek, 1865 Horizon Court, said that they are proposing to raise chickens in a chicken coop on their property.

Board Member Hutchinson asked if they are going to have roosters. Ms. VanderBroek said that they will not be raising roosters.

Board Member Gibbs asked about the size of the lots in the neighborhood.

Staff Member Hemenway distributed photos of the site to the Board. The Board discussed the conditional use permit criteria. The Board asked the applicant why they are proposing to raise chickens. Ms. VanderBroek said it is for educating their children and for sustainability. She explained that the chicken coop would be enclosed and the chickens would be allowed to run from 7:00 a.m. until dusk.

Anthony Kluesner, 1896 Carter Road, spoke in opposition to the request. He had concerns with property values and the impact on the sale of this house. He said that his house will only be 140 feet from the coop.

Kathy Walsh, 1855 Horizon Court, spoke in opposition to the request. She referred to the criteria for granting a conditional use permit. She noted the size of the lot, the use and enjoyment of the property in the immediate area and property value as reasons for denial of the conditional use permit. She said they moved to the area because it was a quiet neighborhood. She said she did not move to the neighborhood to live next to livestock. She said that the Zoning Board of Adjustment had approved a conditional use permit for chickens in the city; however, that was on an 8-acre lot. She referred to a petition in opposition to the request.

Mrs. VanderBroeck rebutted. She said that she has done research on chickens. She said that smell is directly related to how the property is kept and the number of

chickens. She said that the shed will look more like a dog run, and that there will be routine cleaning of the structure.

Staff Member Hemenway presented the staff report. He referred to letters of opposition that had been submitted to the Board. He explained that the Zoning Board of Adjustment has approved the keeping of hens on a property that is 8-acres in size. He said, however, the chicken coop on the 8-acre lot was similar in proximity to adjacent properties and structures. He discussed the location of the chicken coop. He explained the City developed the conditional use permit criteria for the keeping of hens by limiting the number of chickens to 4 and by not allowing roosters to help mitigate the possible impacts on the neighboring properties. He recommended that the Board review the criteria for granting a conditional use permit.

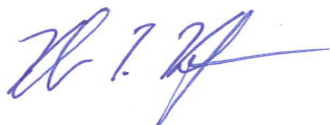
The Board reviewed the criteria for granting a conditional use permit. Board Member Hutchinson said that he used to own a property next to a neighbor with a chicken coop. He said that he had problems selling his home and issues with noise and smells from the chicken coop. He explained that he feels that the conditional use permit does not meet Criteria F, G and H.

Board Member Gibbs agreed with Board Member Hutchinson. Board Member Cremer referred to staff's comments about the criteria for setting conditions for keeping of hens in the City. He said that he feels the application does meet the criteria for granting a conditional use permit.

Motion by Gibbs, seconded by Cremer, to approve the conditional use permit. Motion denied by the following vote: Aye – Cremer; Nay – Klauer, Hutchinson and Gibbs.

**ADJOURNMENT:** The meeting adjourned at 5:37 p.m.

Respectfully submitted,



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Kyle L. Kritz, Associate Planner

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Adopted—June 23, 2011