

MINUTES

CITY OF DUBUQUE ZONING BOARD OF ADJUSTMENT REGULAR SESSION

4:00 p.m.

Thursday, September 27, 2012

City Council Chamber, Historic Federal Building

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

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 4:00 p.m.

MINUTES: The Minutes of the August 23, 2012 meeting were unanimously approved as submitted.

SPECIAL EXCEPTION

DOCKET 32-12 (tabled from August 23, 2012): Application of Mark & Debra McDonnell for a special exception for property located at 314 Jones Street to allow a duplex on a 3,237 square foot lot, 5,000 square feet minimum required, in an OR Office Residential zoning district.

NOTE: The Zoning Board of Adjustment decided to hear Docket 32-12 Special Exception and Docket 51-12 Variance simultaneously.

Debra McDonnell, 1840 Asbury Road, introduced her husband, Mark McDonnell, and they outlined their special exception request. She said they purchased the property and were unaware the property was not permitted as a duplex. She said that the property has operated as a duplex for approximately 12 years.

Staff Member Wernimont outlined the property history, noting difficulty determining the exact status of the property being converted from a single-family home to a duplex. He said that the property was converted illegally and no permits were obtained for the conversion.

Karl Behning, 309 Jones Street, noted that the previous owner used the property as a duplex. He said that he was opposed to the parking variance due to parking issues in the neighborhood. He said that the structure should remain owner occupied, and not a rental. Vice Chairperson Klauer clarified that Mr. Behning has no off-street parking for his single-family home.

Debra McDonnell noted that there are three tenants that are occupying the building, and there are three off-street parking spaces provided. She said that there is parking available on Bissell Lane and on Jones Street in front of the house. She said that there are two bedrooms for each unit. Vice Chairperson Klauer said that this is not a densely developed or heavily traveled neighborhood. He asked Mrs. McDonnell if they looked at the possibility of leasing parking spaces from the adjoining businesses. She said that, however, the adjacent businesses are not interested in leasing their off-street parking.

Staff Member Wernimont outlined the request. He noted that the property was illegally converted from a single-family home to a duplex. He explained that when the McDonnell's applied for a rental license, it was brought to the attention of the Planning Services Department that the property was being used as a duplex. He indicated that two adjacent property owners contacted him about the request. He said that they were confused because the notice indicated that they were seeking approval for a duplex. He said he had to explain to them, that although the property is currently being used as a duplex, it is not legally conforming. He explained that in order to bring the property into compliance, the applicant needed to obtain a parking variance and a special exception for lot area. He noted the historical development pattern of the neighborhood and how most properties built at the turn of the century did not have to provide for off-street parking. Vice Chairperson Klauer said that the property is not densely populated and there appears to be ample on-street parking in the neighborhood.

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

VARIANCE

DOCKET 51-12: Application of Mark & Debra McDonnell for a variance for property located at 314 Jones Street to allow a duplex with 3 off-street parking spaces, where 4 off-street parking spaces are required, in an OR Office Residential zoning district.

The Zoning Board of Adjustment heard this case concurrently with Docket 32-12.

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

SPECIAL EXCEPTIONS

DOCKET 48-12: Application of Laurie Mihm (et. al.) for a special exception for property located at 3038 Kane Court to erect a 7 foot fence in the front yard (Carter Road), 4 foot maximum height allowed, in an R-1 Single-Family Residential zoning district.

Laurie Mihm, 3038 Kane Ct, noted a need for a 7-foot high fence from the back of her house to Carter and along Carter Road. Staff Member Wernimont clarified the definition of a front yard, noting that some lots with multiple frontages have two front yards and two side yards as opposed to an interior lot which has one front yard, two side yards, and one rear yard. Ms. Mihm said she wants to install a 6-foot high fence with a 1-foot decorative embellishment on the top of the fence in order to provide privacy and noise suppression along Carter Road. Staff Member Wernimont reiterated the request, using an aerial photo to illustrate the fence location. He noted that a 7-foot high fence is required to be located 20 feet back from the front property line. He said that a fence located in the front yard is required to be 4-foot high. He referred to an anonymous letter of opposition. He noted that the letter speaks about the storage of vehicles and that the fence may screen the view of these that do not meet off-street storage requirements.

The Board discussed enforcement of stored vehicle regulations. Staff Member Wernimont clarified that although the fence may screen stored vehicles, the stored vehicles will still need to meet the off-street vehicle storage regulations.

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

DOCKET 49-12: Application of Thomas Kuhle, RJD Investments, for a special exception for property located at 297 S. Grandview Avenue to build a detached garage 0 feet from the front property line (Henderson Street), where 20 feet is required, and 0 feet from the west side property line, where 6 feet is required; 1,040 square feet in size, 1,000 square feet maximum allowed; and to cover 48% of the lot with structure, 40% maximum allowed, in an R-1 Single-Family Residential zoning district.

Thomas Kuhle, 12426 Barony Drive, said that there is an older deteriorated garage and he would like to replace it with a new garage. He said that he has renovated the residence at 297 S. Grandview Avenue, and would like to have a new garage to match. He said that the detached garage would be used to store vehicles.

Staff Member Wernimont outlined the staff report, noting the garage location and the expansion area along an unimproved alley. He said he received an inquiry from the neighbor at 298 Bradley Street. The Board noted that the garage would be built on the same footprint, but will extend further along Henderson Street and along an unimproved alley.

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

DOCKET 52-12: Application of Susan Klopfenstein / Top Notch Construction Inc. for a special exception for property located at 1134 Langworthy to build a 18 foot by 20 foot detached garage 1 foot from the east side property line, 6 feet minimum required, in an R-1 Single Family Residential zoning district.

Jeff Schmitt, 2701 Rhomberg Avenue, represented the property owner. He explained that there is an existing old deteriorated garage located on-site. He said that the homeowner would like to remove the garage and build a new garage with an overhang located 1-foot away from the east side property line, with the foundation be located 2 feet from the property line. He said that the new garage would be located further away from the property line than the existing garage.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report. He reiterated the request, noting the size of the proposed detached garage. He explained the reasons for the special exception, and noted the garage will be built outside the footprint of the existing garage. He noted that the Historic Preservation Commission will need and approve the design of the garage.

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

VARIANCE:

DOCKET 45-12 (tabled from August 23, 2012): Application of Keith Wolff, Dubuque Sign / Marty McNamer for a variance for property located at 2100 Asbury Road to install a 75 square foot free-standing sign, 40 square feet maximum permitted, in an OS Office Services District.

Keith Wolff, Dubuque Sign, 210 Cedar Cross Road, represented Marty McNamer. He explained that they are requesting to waive the sign requirement. Mr. Wolff provided a nighttime photo of the sign. He said that it will not be LED or flashing sign. He explained that 72 square feet of the sign will be illuminated. He said that the sign will be located outside of the visibility triangle.

No one spoke in opposition to the request.

Staff Member Hemenway reiterated the request, noting that the building is a multi-tenant structure. He referred to previous sign variance approval that was granted in

2001. He said that a condition was placed on the previously approved sign variance that said no additional freestanding signage shall be allowed. He explained that since that approval, a small freestanding sign has been erected on site. He said that the Board will need to modify the approval in order to allow the second freestanding sign.

Vice Chairperson Klauer noted that the applicant is allowed two 40 square feet freestanding signs for a total of 80 square feet. He said that the proposed sign is 75 square feet in area and that the existing sign is two square feet in area.

Motion by Gibbs, seconded by Cremer, to approve the sign variance to allow one 75 square foot freestanding sign and one 2 square foot freestanding sign. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

CONDITIONAL USE PERMIT:

DOCKET 47-12 (tabled from August 23, 2012): Application of Randy Black for a conditional use permit for property located at 235 W. 2nd Street to open a drive-in carryout restaurant in a C-4 Downtown Commercial zoning district.

Randy Black, 443 Cruiser Drive, said that he is leasing the property at 235 W. 2nd Street. He said that he is requesting to open a drive-in / carry-out restaurant. Mr. Black discussed site plan #2 with the Board. He discussed the locations of structures and businesses in the area. He distributed photos of the site and neighboring properties. He said that since the last meeting, he spoke with the owner, who operates Advanta Sign, which is located directly adjacent to the proposed drive-in / carry-out restaurant. He said that he had objections to lighting and people breaking into his business. He provided a photo of lighting in the area. He said that there are three lights on the property that go on at dusk. He explained that the area is very well lit. He noted that an adjoining property is under surveillance by a security company. He referred to other photos that show the rear of the buildings along Main Street. He discussed line-of-sight from these properties and the distances from the drive-in/carry-out to the rear of these properties. He said that he had a meeting with the Police Department to discuss comments that were made at the previous meeting. He noted that the Police Department has a triple shift that covers this area between the hours of 11 p.m. and 1 a.m. He said that the peak period for pedestrian activity on the street is from 11 p.m. to 2 a.m. He said that it drops off significantly after 2 a.m. until 4 a.m. at which time the Oky-Doky down the street becomes busy again. He said that the Main Street businesses provide services to a diverse group of people. He noted that he spent two Friday nights and two Saturday nights on lower Main Street observing the activity that is taking place. He explained that it is loud and noisy; however, he saw Police present wherever he looked. He said that Site Plan #2 accurately shows the off-street parking and leased parking areas. He said that Exhibit A shows the proposed signage, noting that it tells people not to block the sidewalk. He explained the operation of his business and how vehicles would not be allowed to block the sidewalk. He also noted that he is proposing to walk around the neighborhood and pick-up trash in a one-block area. He

said that previous comments made at the last meeting were primarily concerning noise and disorderly conduct, and those issues are for the City Council and Police to address and should not be considered for his operation. He said that to help alleviate some of the noise from his business, he was constructing an enclosed walk-up area.

The Board discussed off-street employee parking and the drive-thru operation of the business. Mr. Black noted that Site Plan #1 eliminates drive-thru from his business; however, he would like the Board to approve Site Plan #2, which allows one drive-thru and one pedestrian window. He said the drive-thru operation will be beneficial to his operation, especially in the cold winter months. Commissioner Gibbs asked if there is stacking space ahead of a vehicle waiting to be served at the window. Mr. Black said that there is drive aisle space where once an order has been placed, the vehicle can pull ahead and employees will take the food out to the vehicle so the sidewalk will not be blocked. Vice Chairperson Klauer asked about the number of employees that will be working. Mr. Black said initially, he will have two employees on site – one to run the register and one to prepare the food. He said that his operation is set-up for only one person. Vice Chairperson Klauer asked if the driveways will be blocked off. Mr. Black said that the pedestrian side driveway will not operate; however, a driveway will be located between his building and the adjoining business. He referred to Site Plan #2.

Sue Butt, 233-241 Main Street, spoke in opposition to the request. She had questions about the location of the enclosure and the hours of operation. The Board showed Ms. Butt the site plan that was provided, noting the location of the enclosure. The Board asked Mr. Black about his hours of operation. Mr. Black said that there is a peak time between 11 p.m. and 2 a.m. in the area. He said he does not intend to be open after midnight. Ms. Butt asked whether the property was required to have a bathroom. Mr. Black said that there is an ADA accessible bathroom located in the facility.

Jennifer McCoy, 263 Main Street, said that they have been having meetings with the Police Department about the activities that take place on Main Street after the bars close. She said there is no ordinance that prohibits people from screaming and yelling and carrying on in the neighborhood at night. She said that there is no one willing to help them.

Ronald McDonald, owner the property at 198 Locust Street, had concerns regarding parking in the neighborhood. He said that patrons of the business will use his parking lot. He said he had concerns with the hours of operation. He also had concerns with littering in the neighborhood.

Jane Greenfield, 190 Main Street, reiterated the neighbor's concerns. She stated she had concerns with the hours of operation. Vice Chairperson Klauer said the Board has the ability to restrict the hours of operation.

Mr. Black rebutted. He said he will clean-up the litter within a one-block area of his property. He said that the Oky Doky is open 24 hours and Zorro's is open until after 4 a.m. He said he would like to not be restricted on the hours of operation. He said that his intent is to not be open past midnight.

Commissioner Gibbs asked Mr. Black about his hours of operation. Mr. Black said he would like to be open from 11 a.m. to 3 p.m. during weekdays and open from 8 p.m. to 12 a.m. on Friday and Saturday. He said that during some special events, like festivals in the park, he would to be open at a different time.

Staff Member Hemenway presented the staff report. He noted the Zoning Board of Adjustment heard the request at the last meeting. He explained that this is a mixed use area with commercial properties and residential uses. He noted that the Police Department has dedicated more patrols to this area because of the night time activity. He said that it is rare to have a vibrant downtown area without conflicts with off-street parking, littering and pedestrian traffic at night. He said that the Board can place conditions on the hours of operation, signage, and require litter to be picked-up. He said that hours of operation are easy to regulate; however, litter is difficult. He recommended that the Board review the criteria for granting a conditional use.

The Board reviewed the criteria for granting a conditional use permit. Vice Chairperson Klauer said he would like to recommend approval of Site Plan #2 and to place a condition that limits the hours of operation from 12 a.m. to 6 p.m. The Board discussed the hours of operation. Board Member Cremer had concerns with the traffic and stacking of vehicles waiting for the drive-thru. He had concerns with limiting the hours of operation when other businesses in the area are allowed to be open until 2 a.m. He said that the residents should continue to work with the Police Department. Board Member Hutchinson said that he was okay with Site Plan #2. He said he feels the hours should not be limited. He said that there is an existing hot dog stand located in front of a bar on Main Street that operates until 2 a.m.

Motion by Gibbs, seconded by Cremer, to approve the conditional use permit with the condition that the hours of operation are from 6 a.m. to midnight; that Site Plan #2 be followed, and that the drive-thru be signed noting that the sidewalk shall not be blocked. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

SPECIAL EXCEPTION

DOCKET 50-12: Application of Mary Kay & Robert Urell, TRS for a special exception for property located at 887 Mt. Carmel Road to build a 10 foot high fence in the front yard (Cannon Street) and the side yard, where 4 foot and 7 feet respectively are the maximum heights allowed, in an R-1 Single-Family Residential zoning district.

Bob Urell, 2555 Knob Hill, said that he owned the lot at 887 Mt. Carmel Road. He outlined his request to remove an existing fence and build a privacy fence for his new residence. He described in detail the fence and retaining wall heights and location. He noted that there is an existing 10-foot wide utility easement located along the west property line.

Commissioner Gibbs asked the reasons for the location and height of the fence. Mr. Urell noted issues with maintenance of the adjacent property, especially as it impacts the value of his property.

Staff Member Wernimont outlined the enforcement history for the adjacent property.

The Board discussed a letter of opposition from the adjacent property owner at 1845 Cannon Street. Mr. Urell noted that the house could be built 25 feet in height which would have a greater impact on the neighbor's view than the proposed fence. Staff Member Wernimont read letters from adjacent property owners who had no objections to the request.

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

ITEMS FROM STAFF: None.

ITEMS FROM BOARD: None.


ITEMS FROM PUBLIC: None.

ADJOURNMENT: The meeting adjourned at 6:30 p.m.

Respectfully submitted,



Kyle L. Kritz, Associate Planner



Adopted