

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

4:00 p.m.

Thursday, February 27, 2014

City Council Chamber, Historic Federal Building

**Board Members Present:** Chairperson Eugene Bird, Jr.; Board Members Jeff Cremer, Heath Hutchison and Jonathan McCoy; Staff Members Guy Hemenway and Wally Wernimont.

**Board Members Excused:** Board Member Bill Gibbs.

**CALL TO ORDER:** The meeting was called to order by Chairperson Bird at 4:02 p.m.

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

**MINUTES:** The minutes of the January 23, 2014 meeting were approved unanimously as submitted.

**DOCKET 03-14:** Application of DeeAnn Ballard for property located at 1342 Forest Lane, for a variance to build an office/residence 5 feet from the front property line and 1 foot from both side property lines, 20 feet and 3 feet minimum required respectively, in an OR Office Residential zoning district.

Dee Ann Ballard, 1342 Forest Lane, said that she would like to construct an office/residence 5 feet from the front property line and 1 foot from the side property lines. She explained that her lot is angled to the street and that it is difficult to orient the structure to meet the required setbacks.

No one spoke in opposition to the request.

Staff Member Wernimont distributed photos of the site to the Board. He outlined the property's history, noting previous special exception approval, zoning change to facilitate the change in use from a single-family home to an office/residence, and resubmittal for a variance for the required setbacks. He noted that all property owners within 200 feet were notified. He explained that the footprint of the proposed office/residence is very similar to the previously approved special exception. He indicated that there should be adequate site visibility to the sidewalk and street from adjacent properties, and that a site plan would be required to be reviewed by the Planning Department.

Board Members discussed the request and felt that it met the criteria for granting a variance.

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

**DOCKET 04-14:** Application of Randy Black for a conditional use permit for property located at 245 W. 2<sup>nd</sup> Street to remove the restrictions on hours of operation for a drive through/carry-out sandwich shop.

Randy Black, 4133 North Cruiser Lane, Galena, Illinois, addressed the Board regarding his conditional use permit application. He said that his business is located in an entertainment area of the Dubuque's downtown district. He explained that other businesses that are located in the area are allowed to serve food and stay open later than his business. He explained that he feels that he should be allowed to be open just as long as other food establishments in the area. He submitted a petition to the Board signed by people in support of the change in hours of operation for his business. He said he will be adding additional employees that will be working different shifts.

Board Member McCoy asked if Dawgs is open until midnight on Fridays and Saturdays. Mr. Black said that the existing conditional use permit allows him to stay open until midnight on Friday and Saturdays; however, he is only open until 9 p.m. because he does not receive a lot of business before midnight.

Sue Butt, 233 Main Street, spoke in opposition to the request. She said that after the bars close, there are people loitering and causing property damage to area businesses. She also noted that there is a letter she submitted on behalf of Jane M. Greenfield in opposition to extending the hours operation for Dawgs.

Jane Greenfield, who resides at 190 Main Street, Apt. 3., stated in a letter that she is opposed to extending the hours of operation because of noise, litter, rodents, public urination, fighting and property damage.

Dan LoBianco, 3033 West Way, representing Dubuque Main Street, spoke in opposition to the request. He noted that the Dubuque Main Street Board had discussions regarding sidewalk cafes and outdoor vendors, and they felt that midnight is an appropriate time to end those types of operations because of noise and potential impacts to residents living in the downtown area.

Chairperson Bird asked Mr. LoBianco how many outdoor cafes are located in the downtown. Mr. LoBianco said that there are approximately four in the Old Main Historic District. He went on to discuss the regulations for sidewalk cafes. He said that

Dubuque Main Street ends their Dubuque and All That Jazz at 9:30 p.m. in order to not cause potential impacts on downtown businesses and residents.

Board Member Hutchinson asked how late the hotdog vendor is allowed to stay outside of Lot 1. Mr. LoBianco said that based on the ordinance they should be done at midnight.

Board Member Cremer asked Mr. LoBianco what was the reason to end at midnight. Mr. LoBianco explained the process the Dubuque Main Street Board went through, and stated that they had concerns of conflicts between residents and businesses after midnight. He said that they referred to several other cities' ordinances that regulate outdoor cafes and food vendors.

Dan McDonald, Greater Dubuque Development Corporation, located at 900 Jackson Street, spoke in favor of the request. He said he would like to see consistency with regulations for other drive-thru restaurants in the downtown area. He said that the current request is being treated differently than a McDonald's Restaurant down the street. He said that the issues with loitering and noise were there prior to Mr. Black opening his business.

Board Member McCoy asked Mr. McDonald about his comparison between McDonald's and the subject business. He explained that McDonald's is primarily a drive-up restaurant with an indoor seating area, where this is a drive-up restaurant with a walk-up area. Mr. McDonald said that he is only looking at the request as requiring consistency among all drive-thru for carryout restaurants in the area. He explained that people presently can go to the Oky-Doky after midnight, purchase a sandwich and leave, but this business is not allowed to be open after midnight.

Chairperson Bird asked Mr. Black if he has indoor seating. Mr. Black said they have outdoor seating during the warm weather months; however, most of his business is through walk-up traffic or drive-thru.

Board Member Hutchinson asked Mr. Black if he was asking to be open until 3 a.m. Mr. Black noted that he would like to have no time frame limiting his hours of operation.

Board Member McCoy asked if Mr. Black had restrooms available and trash containers on-site. Mr. Black explained that he has an ADA bathroom inside his facility for employees, and that it is available to the public, if they ask.

Board Member Cremer explained that he has an issue with restricting the hours of operation for a business. He stated he voted in favor of the existing conditional use permit because Mr. Black was okay with the conditions being placed. He said that he feels the issue is with liquor licenses and bars located in the immediate area. He explained that Mr. Black's operation is not causing the problem.

Staff Member Hemenway presented the staff report. He referred to a petition signed by 130 people submitted by the applicant in favor of the change in the hours of operation. He also referred to the letter of opposition from Jane M. Greenfield, and a letter of support submitted by Jeff Walker from Advanta Sign who is the current property owner. He discussed the previous conditional use permit approval and the conditions placed upon it. He explained that sidewalk cafes and vendors that operate on the public right-of-way are regulated by the City of Dubuque Health and Engineering Departments. He said that these operations required a license limits the hours of operation. He explained that Mr. Black's restaurant is located on private property and not in the public right of way. He discussed previous approvals for conditional use permits for drive-thrus for KFC, Taco John's, and McDonald's. He noted there are no conditions on hours of operation for these businesses. He explained that he contacted Police Chief Mark Dalsing to obtain information on calls for service for this building. He noted that the Planning Services Department has not received any complaints about the operation since it has been open. He explained that the outdoor seating can be removed at any time as a condition, and that the Board has the ability to approve, modify or deny the request.

Board Member McCoy explained that the drive-thru restaurant is not like any other drive-thru restaurants in the City of Dubuque. He explained that other drive-thru restaurants have restrooms and do not encourage the congregation of groups outside of their building.

Board Member Cremer said that the existing business is being judged on the behavior of other businesses in the neighborhood. He said that the existing business does not sell alcohol. He explained the behavior of individuals appears to be related to alcohol and the serving of alcohol after midnight. He said the City does not place conditions on limiting bar hours to end at midnight, so he feels it would be difficult to limit the hours of operation for a drive-thru/carryout business to end at midnight. He said he is open to placing condition on the hours of operation if it was okay with the business owner.

The Board discussed the possibility of placing conditions that limit serving only to drive-thru traffic as opposed to walk-up traffic. Board Member McCoy said a compromise could be to only allow drive-thru traffic after midnight. Board Member Hutchinson said he did not want to restrict the operation to drive-thru only after midnight. He said he could see limit it as a condition after 2 a.m. Chairperson Board asked Mr. Black if he is open to the compromise. Mr. Black said he had no objection to not allowing outdoor seating after midnight and to only allowing drive-thru service after 2 a.m.

The Board discussed the possibility of approving a conditional use permit with a time limitation to review at a later date if conditions are not being followed. Staff indicated they would need to check with Legal Staff to see if that is feasible.

Board Member Hutchinson said the applicant should modify the request and ask the Board for what they would like to have voted on. Mr. Black explained that he would like the following to be placed in the motion:

- 1) Remove outdoor seating after midnight
- 2) Limit to drive-thru traffic only after 2 a.m.
- 3) No other limits to his hours of operation.

Motion by Hutchinson, seconded by Cremer, to approve the variance with the conditions that the limits on the hours of operation be removed, and that outdoor seating is not allowed after midnight and that service be limited to drive-thru only after 2 a.m. Motion carried by the following vote: Aye – Cremer, Hutchinson and Bird; Nay – McCoy.

**DOCKET 05-14:** Application of Bird Sign Company (Kwik-Stop/Rainbo Oil for a variance for property located at 2255 Kerper Boulevard to place two wall-mounted signs on a multi-tenant building, one sign per tenant permitted, in a HI Heavy Industrial zoning district.

Chairperson Bird removed himself from the table, and explained he would have to abstain from the next three cases.

Eugene Bird, Bird Sign Company, said that the Board would be reviewing three sign variance requests. He explained that two of the sign variance requests have already been completed and installed. He said he would like to apologize; he had a former employee that indicated the permits were issued for the work; however, was cashing the sign permit fees into their own personal account, and that employee is no longer with the company.

Mr. Bird discussed the sign variance involves placing two wall-mounted signs on a multi-tenant building where one sign is permitted in an HI Heavy Industrial District. He explained that the corporate office located at 2255 Kerper Boulevard is composed of multiple businesses. He explained that the signage is for Rainbo Oil Company, Kwik-Stop C-stores, Dairy Queen and Fazoli operations. He explained that the signs are necessary in order to advertise all of the corporate offices for those businesses.

No one spoke in opposition to the request.

Staff Member Hemenway explained the sign ordinance and allowable signage for the property located at 2255 Kerper Boulevard.

The Board discussed the sign variance request, noting they can limit the number of signs on the building; however, if any additional signage needs to be added to the building, it would require Zoning Board of Adjustment approval.

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

**DOCKET 06-14:** Application of Bird Sign Company (Kwik Stop/Rainbo Oil) for a variance for property located at 1210 and 1260 Kerper Boulevard, to install a 450 square foot free standing sign, 200 square feet maximum permitted, and to install nine wall-mounted signs on the Dairy Queen Restaurant, four signs maximum permitted, in a C-3 General Commercial zoning district.

Eugene Bird, Bird Sign Company, referred to the sign renderings included in the Board's packet. He explained that they are requesting to install one freestanding sign that will advertise the businesses: Dairy Queen Restaurant, Fazoli's Restaurant and the Kwik-Stop Convenience Store. He said that would like to place all of the signage on one sign, and that the Board could place a condition that in addition to a monument sign no more freestanding signs be allowed. He referred to the Wendy's Restaurant and the BP Gas Station located across the street and noted that each of those businesses has two freestanding signs.

He then explained the location of all the wall-mounted signage to be located on the Dairy Queen Restaurant. He explained that the internally illuminated Dairy Queen Restaurant signs have been installed, and that some of the poster signs have been added to the side of the building. He told his foreman to stop the sign installation once he realized the sign permit was not approved for the installation.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report, noting the sign regulations for properties located in the C-3 General Commercial District. He explained there was an ordinance change in 2009 regarding building complex signage. He said the site could have been considered a building complex because there are two or more buildings on the site; however, when that change was made, it limited the amount of freestanding signs and square footage for the businesses. He explained that both the Dairy Queen and Kwikstop/Fazolis are allowed two 200 square foot freestanding signs each. He explained that one of the concerns is that 16<sup>th</sup> Street is a gateway into the city of Dubuque, and the 450 square foot sign may have visual clutter.

Board Member McCoy asked about the height of the sign. Mr. Bird explained that an embellishment of five-foot tall is allowed on the sign, and therefore the height of the sign is taken below the embellishment to the average grade at the base of the structure. Mr. Bird referred to the Mystique Casino sign, Catfish Charlie's and Hawkeye Tire signs and the total square footage of those signs. Vice Chairperson McCoy said he had issue with the size of the sign and the impacts on the gateway to the community. He

said that he would like to table the request to another meeting in order to allow Mr. Bird to provide additional drawings of what could be allowed under the current ordinance.

The Board discussed the location of the wall-mounted signs. Board Member Cremer indicated he had concerns with the poster sign location and the intent for the use of them. The Board discussed that this adds to the visual clutter of signs on the site.

Motion by Cremer, seconded by Hutchinson, to table the variance at the applicant's request. Motion carried by the following vote: Aye – McCoy, Cremer, Hutchinson; Nay - None.

**DOCKET 07-14:** Application of Bird Sign Co. (Kwik Stop/Rainbo Oil) for a variance for property located at 2380 Gateway Drive, to permit the installation of a 322 square foot free-standing building complex sign, 300 square feet maximum permitted, and to install nine wall-mounted signs on the Dairy Queen Restaurant, 2 signs maximum permitted, for a total of 230 square feet of wall mounted signage, 130 square feet maximum permitted in a PC/Default Pre-2009 C-3 General Commercial zoning district.

Eugene Bird, Bird Sign Company, discussed that the signs have been installed. He explained that the existing 322 square foot freestanding sign is 22 square feet over what is allowed. He explained that the wall-mounted signage is composed of four internally illuminated plastic cabinet signs that note Dairy Queen Restaurant and five poster size signs that are attached to the side of the building.

No one spoke in opposition to the request.

Staff Member Hemenway noted the zoning of the property and the sign regulations. He explained that this property is zoned PC Planned Commercial and that the sign regulations refer to pre-2009 C-3 General Commercial sign regulations. He explained that those sign regulations allowed a building complex sign to be up to 300 square feet. He also indicated that only two wall-mounted signs would be allowed for the Dairy Queen. He noted that Mr. Bird is requesting nine wall-mounted signs.

The Board discussed the request. They noted that the information on the poster-sized signs can be adequately advertise on the electronic message center sign that is part of the freestanding sign.

Motion by Cremer, seconded by Hutchinson, to approve the sign variance to allow four internally illuminated wall-mounted signs. No poster signs are allowed. Motion carried by the following vote: Aye – McCoy, Cremer and Hutchinson; Nay – None.

**ADJOURNMENT:** The meeting adjourned at 6:27 p.m.

Respectfully submitted,

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Kyle L. Kritz, Associate Planner

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Adopted