



Approved

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

5:00 p.m.

Thursday, August 28, 2014

City Council Chamber, Historic Federal Building

Board Members Present: Chairperson Eugene Bird, Jr., Board Members Jonathan McCoy, Jeff Cremer, and Bill Gibbs; Staff Members Guy Hemenway, Wally Wernimont and Kyle Kritz.

Board Members Excused: None.

CALL TO ORDER: The meeting was called to order at 5:00 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 July 24, 2014 Zoning Board of Adjustment meeting were approved unanimously as submitted.

Docket 28-14 (tabled): Application of Adam Johnson, Architect (Chris and Gary Stelpflug, Weaver Castle LLC) for a special exception to allow an addition/garage 0 feet from the north side property line, 3 feet minimum required, in an OR Office Residential zoning district for property located at 1576 Locust Street.

Chairperson Bird asked for clarification regarding the application, noting that he had not attended the previous meeting.

Staff Member Wernimont said that the application was tabled to afford the applicant the ability to meet with the neighbor and address the concerns he expressed at the previous meeting.

Adam Johnson, Architect, representing Chris and Gary Stelpflug, outlined his request, stating that they intend to reposition the garage addition to enable the neighbor to build on his property if he chooses. Mr. Johnson noted that the City's paved alley project should help mitigate storm water problems in the future.

No one spoke in opposition to the request.

Staff Member Wernimont outlined the request, noting that there was a historic garage at this location that had been removed, and that the foundation was still in place. He said

that the applicant has agreed to shift the garage slightly to accommodate the neighbor's concerns regarding future development of his property. He said the buildings will only cover 26% of the lot when the proposed project is completed. He recommended that, if approved, the Board require that storm water be managed, and that the property line be clearly demonstrated.

Motion by McCoy, seconded by Gibbs, to approve the special exception to allow an additional garage 0 feet from the north side property line, 3 feet minimum required, in an OR Office Residential District, with the conditions that:

1. A gutter be installed on the north side of the garage/addition to help divert storm water from flowing directly onto the neighboring property to the north; and
2. The property owner be required to demonstrate to the Building official the location of the property line by either locating the pins or obtaining a survey.

Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 33-14 (Tabled): Application of Mike Bieniek / SBA Communications / Verizon Wireless for a Conditional Use Permit to construct a 120 foot high monopole communications tower and associated equipment shelter in an R-1 Single Family Residential zoning district for property located at 3500 Pennsylvania Avenue (PIN 10-28-203-008).

Mike Bieniek, 10700 Higgins Road, Suite 240, Rosemont, IL, outlined his request. He explained the location of the cell tower and the necessity to provide adequate coverage to the area.

Staff Member Hemenway discussed the previous Zoning Board of Adjustment meeting, noting that the Board and neighbors had asked questions regarding the structural integrity of the tower, the effect of the tower on property values in the area, and the ability of the tower to be shifted so as to meet the required setbacks. He said that the Board tabled the request in an effort to allow the applicant to address those concerns.

Mr. Bieniek noted that the leased area was a 50' by 50' parcel, and he said that the equipment enclosure would be fenced and screened. Mr. Bieniek discussed the potential impact of the tower on property values, noting that in the past, studies have demonstrated that there is generally no deleterious effect to property values. He referenced a certified engineering report regarding the tower's structural integrity provided by Saber Engineering. He explained how the pole would collapse in the event of a catastrophic failure. He said that there is an internal cable system that ensures that, in the event of failure, the pole will fold in upon itself and not topple. He noted that the pole would have an extensive concrete foundation. He said that they had explored

alternate locations and none were available that satisfied their technical needs. He said that if the tower were to be shifted it will still affect some adjacent properties.

Chairperson Bird asked if he had documentation available that proves the tower will have no negative impact on property values. Mr. Bieniek said that studies had been conducted; however, he had not provided any of that information.

Board Member McCoy noted that the Board had asked for this information at the last meeting. Mr. Bieniek explained the failure percentage rate, noting that the chance was reduced to 25% because the pole was only using a portion of its total capacity. He said this makes the pole less prone to fail.

Board Member Gibbs requested technical details regarding the foundation. Mr. Bieniek said that it was an approximately 20-30 foot deep concrete pylon. He said that the engineering firm conducts soil borings to determine the soil suitability and the foundation is designed using this information.

Board Member McCoy asked if the tower could be repositioned on the site, moving it closer to the church parking lot. Mr. Bieniek said that moving it closer to the church parking lot would place it on a lower grade, therefore, making it necessary to increase the tower height to achieve the same signal strength. He said there is an approximately 10-foot drop from the current location to the edge of the church parking lot. He said that only one residential property at the southwest corner of the site would benefit if the tower were to be moved. He said that they have a current access easement to the property and that it would not be difficult to increase the distance of the access drive.

Board Member Gibbs asked if representatives of the church had discussed the tower's impact to the adjacent properties with the neighbors. Mr. Bieniek said that existing towers in the area are generally operating at full capacity, and that as technology and demand for data has changed, it is necessary to fill in the grid with additional towers. He said that former tower placements were generally located in commercial areas and that most of the infill areas left are located in residential areas. He said that increased signal strength at this location would help support the E-911 system, improve coverage and enhance the ability for people to use Wi-Fi. He discussed how the tower location was determined, referencing engineering studies and propagation maps.

Chairperson Bird asked if the applicant had arranged a meeting with the neighbors in an effort to address their concerns. Mr. Bieniek said that they have not arranged for a meeting.

Scott and Beth Kilgore, 1885 Westridge, spoke in opposition to the request, noting concerns with property values. They submitted a document provided by Cindy Stecher, local Realtor with Remax, stating that cell towers generally have an impact on the value of property and may eliminate the ability for a potential buyer to get an FHA loan. They

expressed concerns with lighting and ongoing maintenance of the tower. Mr. Kilgore said that the City code does not provide for a tower in a residential district. He said that he felt the intention of the applicant is to provide E-911 and enhanced services in and around the Kennedy Mall area.

Peter and Jessica Hesselman, 1645 Westridge, spoke in opposition to the request. They said the tower would be located directly behind their home. They said that the tower could be relocated to the Kennedy Mall parking lot. Ms. Hesselman said that they currently have excellent coverage at their location. They noted that there are vacant lots available for sale behind Joanne Fabrics in close proximity to the proposed tower location.

Bob Hein, 1635 Westridge, spoke in opposition to the request. He discussed the location of the tower, noting that it could be repositioned on the lot. He asked how big the equipment shed would be, and if it would be adequately fenced and screened.

Mr. Bieniek addressed the concerns expressed by the neighbors, noting that they do intend to provide enhanced coverage to the Kennedy Mall area. He said that moving the tower from its current position could cause interference with the signals from others towers in close proximity or could create gaps in coverage.

Board Member Cremer asked about the current access road. Mr. Bieniek said that they would have no problem extending the access drive.

Board Members discussed the location of the tower.

Staff Member Hemenway presented the staff report, noting the section of the Unified Development Code that allowed a cell tower to be located in a residential district provided that a conditional use permit was approved. He discussed the site plan submitted by the applicant, showing the access road from the terminus of Kebbie Lane, the equipment enclosure and screening, and the equipment shed. He said that it also indicated the 50' by 50' leased area. He referred to aerial photos of the site taken at various angles showing the tower's location relative to the adjacent properties. He noted that six adjacent properties are within the potential fall zone of the tower. He asked that the Board review the criteria for granting both a Variance and a Conditional Use prior to making a decision.

Chairperson Bird noted that he was not at the last meeting, and said that he did not feel he had adequate information to enable him to make an informed decision. He asked if financial incentives had been provided for the adjacent residential properties as part of the lease agreement with the church. Mr. Bieniek said they had not.

Board Member Gibbs said that he cannot support the request as the applicant had not provide documentation proving that the tower would not have an impact on the value of

the adjacent residential properties.

Board Member Cremer said he felt that, although property values are subjective, the prohibition of FHA loans for properties within tower drop zones would definitely have an impact on the ability of the property owner to sell. He said he felt it was contingent upon the applicant to meet with the neighbors.

Board Members agreed that the applicant should arrange a meeting with the neighbors in an effort to address their concerns. Mr. Bieniek agreed and asked that both requests be tabled to afford him the opportunity to arrange a meeting with adjacent property owners.

Board Members said that they would like documentation regarding property values in areas where cell towers have been built. They also said they would like some information provided by a local realtor and would also like to receive more information on the tower structure and the foundation from an engineer. Mr. Bieniek said that he could provide the requested information.

Motion by Bird, seconded by Gibbs, to table Docket 33-14. Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 34-14 (Tabled): Application of Mike Bieniek / SBA Communications / Verizon Wireless for a Variance to install a 120 foot high monopole communications tower 75 feet from the property line where 120 feet is required for property located at 3500 Pennsylvania Avenue (PIN 10-28-203-008)

Motion by Bird, seconded by McCoy, to table Docket 34-14. Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 36-14: Application of Dale Hefel for a Special Exception to build a 12 foot by 24 foot detached garage 1 foot from the north side property line, 6 feet is required for both setbacks, in an R-1 Single Family Residential zoning district for property located at 905 Nevada Street.

Dale Hefel, 905 Nevada Street, explained that he had a pontoon boat shelter on the site, and he has continued to modify the structure to create a detached garage.

Staff Member Hemenway distributed aerial photos of the site.

No one spoke in opposition to the request.

Staff Member Hemenway explained the setbacks and the orientation of the garage to the surrounding residential and commercial properties. He said that the structure is currently under construction.

Board Member McCoy asked about the driveway location. Staff Member Hemenway explained that the lot line splits the driveway and that the access is shared by the applicant and the adjacent property owner.

Commissioners discussed the request and felt it was appropriate.

Motion by Cremer, seconded by Gibbs, to approve the Special Exception as submitted. Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 37-14: Application of Brown Family Trust for a Special Exception to build a storage shed 2 feet from the west side property line and 2 feet from the rear property line, 6 feet required, in an R-1 Single Family Residential zoning district for property located at 490 South Grandview Avenue .

Lee Brown, 490 South Grandview, stated that his intention is to build a 14' by 16' shed at the rear corner of his property. He said that there were structures at this location in the past. He noted the site topography and discussed the grading and retaining wall construction that he had already undertaken. He said that there was a paved pad at the subject location. He noted the location of existing drainage swales and discussed how storm water flowed from the site. He said that he has improved the property by grading and seeding. He said that the design of the storage building will match and complement the existing home using white vinyl siding and a black shingled roof. He noted the building's design, orientation, and location of the access doors.

James Braun, 260 Dillon Street, spoke in opposition to the request. He said that Mr. Brown has no need to encroach on the required six-foot side yard setback because he has adequate alley access and the shed can fit easily into his yard. He expressed concerns with storm water runoff from the roof that he said may flow onto his property. He said that he currently has water problems and standing water in his yard.

Mr. Brown said that past storm events had eroded his property and that he had taken measures to alleviate these problems. He said that he can use the gutters on the proposed storage building to redirect storm water back onto his property. He said if the garage were to be shifted so as to meet the required setbacks it would reduce the already limited lawn area that he has. He said that a shed at this location will not alter the general overall stormwater volume or drainage pattern.

Staff Member Wernimont outlined the staff report, noting that no permit is necessary for the driveway or pad that had been created. He reiterated the request, utilizing aerial photos to indicate where the shed would be located. He said that the improvements that had already been undertaken included a retaining wall, concrete pad and fence that did not require permits. He said that a shed that was 120 square feet or less could be

placed 3 feet from the property line in this district. He discussed runoff patterns in the neighborhood, noting that storm water would likely flow from the applicant's shed onto the subject lot and then into the alley and away from the adjacent lot.

Mr. Brown said that he would collect the storm water in a series of drain tiles and direct it from his property to the alley.

Motion by McCoy, seconded by Cremer, to approve the Special Exception request with the condition that the proposed shed have gutters and that storm water from the shed is collected and directed away from the adjacent residential properties. Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 38-14: Application of Mike Gross for a Special Exception to construct a garage addition 0 feet from the rear property line, 6 feet required, and increase the total amount of accessory structures to 1,188 square feet, 1,000 square feet maximum permitted, in an R-1 Single Family Residential zoning district for property located at 30 Meadow Lane.

Michael Gross said that he wanted to construct a garage that would enable him to safely contain his wood pile.

Dan Rank, owner of the property at 1810 Lombard Street, said that he was not necessarily opposed to the 0-foot setback, but that the applicant had removed hedges and now the structure is visible from his property. He said he would like the hedge to be replaced whether it is on his or the applicant's property.

Chairperson Bird recommended that Mr. Rank work out an amenable agreement with Mr. Gross to replace the vegetation.

Staff Member Wernimont outlined the staff report, noting that the structure had already been built. He discussed the site's location relative to the adjacent properties, the site topography and existing screening and landscaping in the area. He recommended that, if approved, a gutter be installed along the eastern edge of the building to direct storm water away from the adjacent property. He said that, as the applicant is requesting a 0-foot setback, the property line should be clearly demonstrated to the Building official by either finding the property pins or providing a survey. He said he was not able to determine where the vegetation that had been removed was located.

Board Members reviewed the request and felt that it was appropriate, and that the property owner and adjacent property owner should agree on adequate screening.

Motion by McCoy, seconded by Cremer, to approve the Special Exception request with the conditions that:

1. A gutter be installed along the eastern edge of the building roof to direct storm away from the neighboring property; and
2. The property owner be required to demonstrate to the Building official the location of the property line by either locating the property pins or by obtaining a survey.

Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

Docket 39-14: Application of the Dubuque Humane Society / Maria Benham for a Variance to install a 66.3 square foot free standing sign, 30 square foot max permitted, in a PI Planned Industrial District for property located at 4242 Chavenelle Road.

Maria Benham of the Dubuque Humane Society discussed her request, noting that many people have had difficulty finding the new location of the Humane Society and their entrance drive. She said that existing signs on the property are relatively small and do not adequately advertise their location. She said that a larger sign is necessary to effectively advertise the Humane Society's building and campus location.

Board Member McCoy asked if the Humane Society already had two signs on the property. Ms. Benham said that they currently have two 32 square foot signs, and that one would be removed if the request was approved. Board Member McCoy was critical of the design of the existing sign stating that the text advertising the Dubuque Humane Society did not utilize the entire sign area. He said that, if redesigned, the sign would be much easier to see.

Board Members discussed the implications of a message center sign at this location. Ms. Benham said that they would request that the Dubuque Industrial Center sign regulations be amended to permit message center signs, and that this request would be heard by the Zoning Advisory Commission and City Council.

Staff Member Hemenway discussed the staff report, detailing the Dubuque Industrial Center's sign regulations, the location of the existing signs and proposed signs and the signs proximity to the Northwest Arterial and adjacent commercial properties.

Board Member McCoy asked what signage was permitted under the current district regulations. He expressed concerns with the sign design and with the existing signage that is allowed.

Chairperson Bird asked the applicant and her sign contractor, Rick Droeske, Lange Sign, 17835 North Street, East Dubuque, IL, to explain the need for the larger electronic sign. Ms. Benham noted that they would like to advertise the animals for adoption and the services provided by the Humane Society, and also to adequately advertise their

name and location to the motoring public. Mr. Droeske noted that, using standard sign contractor formulas, they determined that a 30 square foot sign would be difficult to read from the adjacent public rights-of-way, or the intersection.

Board Member Cremer said that based on the size of the property, he felt that the sign would be appropriate.

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

Docket 40-14: Application of George Murphy / Murphy Construction Group for a Special Exception to construct a home 8 feet from the front and rear yard property lines, 20 feet minimum setback required for both, in an R-1 Single Family Residential zoning district for property located at 1375 Finley.

Steve Ruden, 1375 Finley Street, said he was speaking on behalf of his contractor. He noted that the existing house had been seriously damaged by fire in November and that he would like to demolish it and build a new house and deck at the same location. He said that the deck on the back would be approximately 8 feet from the rear property line and that the front of the house would be approximately 8 feet from the front property line along Finley Street.

Staff Member Hemenway outlined the staff report. He explained current setbacks in the neighborhood, stating that the existing home had been fire damaged and gutted. He noted that the property configuration was unusual because it had 105 feet of frontage along Finley Street but was only 60 feet deep. He said that requiring both a 20-foot front and rear yard setback would reduce the building envelope to 20 feet. He noted that the adjacent structure to the north is approximately 4 feet from the front property line and that replacing the fire damaged house may have a positive effect on the adjacent properties. He said that the garage would be side loaded and that cars would not stack in front of the garage out into the right-of-way.

Board Members discussed the request and felt it was appropriate.

Motion by McCoy, seconded by Gibbs, to approve the Special Exception request as submitted. Motion carried by the following vote: Aye – McCoy, Cremer, Gibbs and Bird; Nay - None.

ADJOURNMENT: The meeting adjourned at 7:00 p.m.

Respectfully submitted,

Kyle L. Kritz, Associate Planner

Adopted