

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

5:00 p.m.

Thursday, May 28, 2015

City Council Chamber, Historic Federal Building

Board Members Present: Chairperson Eugene Bird, Jr.; Board Members Jeff Cremer, Bethany Golombeski, and Joyce Pope; Staff Members Guy Hemenway, Kyle Kritz and Wally Wernimont.

Board Members Excused: Jonathan McCoy.

CALL TO ORDER: The meeting was called to order by Chairperson Bird 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 April 23, 2015 Zoning Board of Adjustment meeting were approved unanimously as submitted.

Docket 10-15: Application of Karen Hudek, 1295 Cerro Drive, for a Special Exception to construct an attached garage 3 feet from the west side property line, 6 feet minimum required, in an R-1 Single-Family Residential zoning district.

Staff read an email provided by Ms. Hudek asking the Board to table her request.

Motion by Cremer, seconded by Pope, to table Docket 10-15. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

Docket 16-15: Application of Devin Sweeney, 1250 Kelly Lane, for a Special Exception to build a 1,500 square foot detached garage, where 1,000 square foot maximum is permitted, in an R-1 Single-Family Residential zoning district.

Devin Sweeney, 1250 Kelly Lane, said he has an existing 22' by 24' detached garage and he would like to demolish it and replace it with 30' by 50' detached garage. He said that as he has three vehicles and his fiancé also has a car, he needs additional storage space.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report, noting that Mr. Sweeney would be removing an existing garage and replacing it with a larger garage. He said that the garage will be placed on a large lot and will be screened from the adjacent properties by an adjacent detached garage, the subject house, and some evergreen vegetation on the adjacent lot. He said the garage will be built well away from the adjacent residences, and set well back from the public right-of-way.

Board Members discussed the request and felt it was appropriate.

Motion by Cremer, seconded by Golombeski, to approve the request as submitted.

Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

Docket 17-15: Application of Kristy Kelly, 1726 Adair Street, for a Special Exception to allow a 9-foot high side yard fence, 7-foot height maximum permitted, in an R-1 Single-Family Residential zoning district.

Joel Kelly, 1726 Adair Street, noted that he had added a two-foot lattice extension to the top of their existing seven-foot high fence. He said that they have climbing vines that will be attractive.

Chairperson Bird read a letter of opposition submitted by the adjacent property owner at 1760 Adair Street, expressing concerns with the maintenance, appearance, and height of the fence.

The applicant submitted a photograph of the fence.

Staff Member Hemenway outlined the staff report, explaining the length and location of the fence, and noting that the extension would be a two-foot lattice that allows light and ventilation to permeate. He noted that the adjacent property owners at 1760 Adair Street have been granted a special exception to build a garage, which he said had 8-foot walls and a 12-foot peak, 0 feet from the applicant's property line. He said that their carport is also built 0 feet from the lot line and appears to be an illegal installation as the Board had denied the setback request in 1974. He said that the fence partially screens the applicant's property from the garage and carport. He noted that a building permit for the two-foot extension was issued in error.

Board Member Pope expressed concerns that the City had issued a permit and then required that the applicant seek approval retroactively.

Chairperson Bird said that as the fence is located directly adjacent to the neighbor's garage; it serves as screening for the applicant.

Board Member Cremer noted that the yard is neatly kept and the fence appears to be soundly built.

Board Member Golombeski said that because of the neighbor's garage height and proximity to the property line, the fence is appropriate.

Motion by Cremer, seconded by Pope, to approve the request to allow a 9-foot high side yard fence, 7-foot height maximum permitted, in an R-1 Single-Family Residential District. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

Docket 18-15: Application of Tim Mueller, 2901 Hillcrest Road, for a Special Exception to allow a total of 1,850 square feet of detached accessory structures, 1,000 square foot maximum allowed, in an R-1 Single-Family Residential zoning district.

Tim Mueller, 2901 Hillcrest Road, said that his request was to build a solar array and a three car garage behind his existing commercial building.

Todd Locher, 122 2nd Ave, NW, Farley, Iowa said that he represented Bob Renne, 1950 Avalon Street. He said Mr. Renee's home is located 60 feet from Mr. Mueller's property. He contended that Mr. Mueller was running an illegal business from his house and that he has equipment and solar panels stored in the yard with an existing solar array affixed to his house. He said that if the request were to be approved, it would allow Mr. Mueller to expand his business.

Chairperson Bird said that it is not the Board's charge to determine the legal status of Mr. Mueller's business.

Mr. Locher asked that the Board deny the request because it is not consistent with the adjacent park and residential uses.

Bob and Cindy Renne, 1950 Avalon Street, expressed concerns with the safety of children playing in the adjacent park. They said that they consider Mr. Mueller's business illegal, noting the large shop and large paved parking area on the property. They said, if approved, Mr. Mueller will be able to expand his business. Mr. Renne said that the solar array will be hot, carry high voltage, have sharp edges and glass surfaces, all of which he said raises safety concerns with children playing in the adjacent park. He said that solar panels often delay a fire department's ability to safely access burning buildings. He said that the solar array will kill the underlying vegetation and impact his property value. He said there is a potential for the solar panel to reflect light into adjacent homes. He asked that the Board deny or table the applicant's request until such time as the proposed ordinance change regarding solar arrays is implemented.

Board Member Pope asked Mr. Renne if he opposed the proposed storage building in addition to the solar array. Mr. Renne said yes, he was still opposed to the storage building.

Gerald Welter, 1974 Avalon Street, said that his house is located in close proximity to the proposed solar array, and he expressed concerns regarding the safety of children playing in the park, as the solar array will sit low enough for them to be able to climb on it.

Rita Cattrell, 918 Rhomberg, said that she takes children to the park and has concerns with their safety because of the electromagnetic fields that she said were given off by solar arrays.

Ray Owensby, 2955 Hillcrest Road, said that he has lived next door to Mr. Mueller for 15 years. He said that any concerns he has regarding Mr. Mueller's proposed project or property can be resolved between him and Mr. Mueller. He said that he was somewhat concerned with the potential for noise emanating from the business. He said that he can speak directly with Mr. Mueller regarding his concerns.

Bobbie Smrcina, 1960 Avalon Road, said that the small children in the park are generally supervised by adults, and that their path to the proposed solar array location is blocked by a long chain-link dog run. She said that the storage building will enable Mr. Mueller to store materials that are currently lying about on the property inside of the building. She said that the view from the neighbor's property is not guaranteed. She said she has no objection to Mr. Mueller's proposed project.

Robert Smrcina, 1960 Avalon Road, noted that there are a number of ground-level solar arrays throughout the community that have not posed a safety problem. He said that solar arrays are not hazardous to your health, and that he was in favor of Mr. Mueller's request. He said that, based on site topography, the solar panels would not block the neighbor's views.

Mr. Mueller rebutted some of the concerns raised by neighbors saying that solar arrays are inspected and have to pass strict scrutiny. He said the solar array will be in compliance with national electrical code. He said that the panels operate at 25 degrees above ambient air temperature, the array has no sharp edges and that it will be positioned too high for children to climb on. He said they have an excellent track record regarding safety. He noted that a business has been at this location for over 60 years. He said that Mr. Renee's house is 178 feet away, and that the solar panel would not reflect light into his yard due to the absorption characteristics and angle of the panel.

Mr. Mueller said that at its proposed position and height, the panel would not block the Renne's view to the park. He said that Mr. Renne does not mow his lawn and as a result it is unsightly. He noted that the National Realtors Association said that solar

panels will actually increase property values and will also meet the City's sustainability objectives. He said that the additional storage building will help him store some of his outdoor materials inside the building, and out of sight.

Board Member Golombeski asked if the panels could be placed on the smaller accessory building. Mr. Mueller said that the proposed angle of the roof for the accessory shed will not facilitate installation of the solar array. He said that the accessory building will be located on a level portion of the lot with close access to the existing paved driveway.

Staff Member Wernimont outlined the staff report, noting the property history, stating that the contractor's shop is a legally non-conforming business as it was established prior to annexation into the city. He said Mr. Mueller has continued the legal business activity at this location. He discussed the potential for expansion of the business and the use of the array and buildings. He said that staff is often asked to monitor home occupations that involve legal and illegal businesses. He said that a building permit moratorium has not been established even though the City is exploring new regulations for solar arrays.

Staff Member Kritz noted that there are four potential alternatives that will be discussed regarding regulation of solar arrays that include the do nothing alternative, establishing maximum size and height, requiring a conditional use permit, or outright prohibition of arrays.

Board Members discussed those alternatives.

Board Member Pope asked about the existing site topography. Staff Member Wernimont discussed the contour map, noting the high and low portions of both the Mueller property and the adjacent residential lots.

Board Members asked staff if the request for the accessory building could be separated from the request for the array. Staff Member Wernimont said the Board could approve or deny each separately. He noted that no portion of the proposed detached accessory structure could be used for the business. He said that, if approved, Mr. Mueller would be covering 14% of his lot with structures, when 40% is permitted in an R-1 District.

Board Member Pope said that she felt that the Board should table the request until the text amendment regarding solar array regulation is finalized.

Chairperson Bird said that the request to table should be at the applicant's discretion.

Board Members discussed the pending solar array regulations.

Board Member Golombeski said that solar energy is great, but that these large panels can be imposing.

Board Member Cremer expressed concerns with the potential for expansion of Mr. Mueller's business and subsequent zoning enforcement issues.

Chairperson Bird offered Mr. Mueller the opportunity to table his request. Mr. Mueller stated that he had received a building permit for his installation. Staff Member Kritz noted that the permit was rescinded 3 days later, and that Mr. Mueller was made aware of it by email and a phone conversation.

Chairperson Bird said that he was partial to Board Member Golombeski's idea regarding integration of the solar panel into the roof of the existing or proposed accessory buildings.

Mr. Mueller said that he would like to have his request tabled.

Motion by Cremer, seconded by Golombeski, to table the applicant's request, asking that he provide more information and potential design modifications, in consultation with the neighbors. Motion carried by the following vote: Aye – Cremer, Golombeski, and Pope; Nay – Bird.

Docket 19-15: Application of Sheri Garner, 1485 Langworthy Street, for a Conditional Use Permit to allow an accessory dwelling unit as a conditional use in an R-1 Single-Family residential zoning district.

Sheri Garner, 1485 Langworthy Street, said that she is requesting a conditional use permit to allow her to have an accessory dwelling unit in the lower level of her home. She noted that the unit has been there for quite some time.

Board Member Golombeski asked if this were similar to a garden apartment. Ms. Garner said it was.

Staff Member Wernimont outlined the staff report, stating that when the applicant acquired the property, the apartment was already located in the basement. He said that when she requested a rental license, she was alerted to the fact that it was an illegal unit which had been constructed without prior approval. He discussed the accessory dwelling unit regulations, including square footage and owner-occupancy requirements. He noted that the property had an excess of off-street parking and that no neighbors had expressed concerns with the proposal.

Board Members discussed the request and felt it was appropriate.

Motion by Cremer, seconded by Pope, to approve the accessory dwelling unit as a conditional use in an R-1 Residential Zoning District. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

Docket 20-15: Application of P.O.C., Inc. / Gary Robey, for a Conditional Use Permit for property located at 285 Locust Street to allow an auto repair shop in a C-4 Downtown Commercial District

Gary Robey said he owns and operates Auto Diagnostics at 3223 University Avenue and resides at 19317 Cedar Court, East Dubuque, IL.

No one spoke in opposition.

Staff Member Hemenway presented the staff report, noting the current zoning of the property. He explained the mixed use nature of C-4 zoning districts, stating that some of the more intense uses require conditional use permits because they may be located directly adjacent to or beneath residential uses. He said that the subject property; however, is located on a block that is fully commercial which includes parking lots, offices, restaurants, auto repair and car wash uses. He said that the subject property was separated from the back yards of the adjacent residential property on Bluff Street by an alley.

Board Member Pope expressed concern regarding the 200-foot notification, noting that people who own residential properties along Main Street across from the proposed auto repair shop were not notified.

Staff Members Hemenway and Wernimont explained the notification process, noting the published public notice and the 200-foot written notice requirements.

Board Members discussed the proposed request in light of the surrounding uses and the existing and former uses of the subject property.

Chairperson Bird asked the applicant what the hours of operation would be. Mr. Robey noted his business would operate from 7:30 a.m. till 5:30 p.m. Mr. Robey also noted that there is an existing auto repair shop directly adjacent to Miracle Car Wash in the same block.

Board Member Golombeski said the proposed use is consistent with the other auto-related businesses on that block, including the car wash, auto repair, and parking lot. She noted that the former ambulance service was operating 24 hours a day.

Board Member Cremer said he did not have concerns with the proposed auto repair shop, especially since the hours of operation would be reasonable.

Motion by Cremer, seconded by Golombeski, to approve the auto repair shop as a conditional use in the C-4 Downtown Commercial District. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

Docket 21-15: Application of WHKS / City of Dubuque, for a Conditional Use Permit for property along U.S. Highway 61/151 to allow the installation of underground pipelines in the Floodway Overlay District.

Staff Member Kritz outlined the staff report, noting that the Corps of Engineers and Department of Natural Resources have reviewed the proposed installation of the underground pipeline as it regards environmental safety and other relevant flood plain development regulations. He said the pipeline will have several underground stream crossings. He said that the pipeline contractors will be required to protect the stream from damage and restore the stream channel to maintain flood flows. He noted the various reviews required for the pipeline.

Gary Henry, 8393 Elmwood Drive, asked if staff knew if the pipeline would traverse his property. Staff Member Kritz offered to check for him.

Board Members discussed the request, noting that their role was to simply verify that all proper measures were taken regarding regulation of development within the flood plain. Board Members were satisfied that the review was thorough.

Motion by Cremer, seconded by Pope, to approve the installation of an underground pipeline in the floodway overlay district. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope, and Bird; Nay – None.

ITEMS FROM STAFF: Staff Member Kritz distributed the proposed text amendment options regarding regulation of solar arrays. He asked the Board to review the proposal and provide him comments. Board Members agreed to review the materials and provide comments.

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

Respectfully submitted,

Kyle L. Kritz, Associate Planner

Adopted