



Approved

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

5:00 p.m.

Thursday, November 19, 2015

City Council Chamber, Historic Federal Building

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

Board Members Excused: None.

Board Members Unexcused: 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 October 22, 2015 meeting were approved unanimously as submitted.

Docket 50-15: Application of K & L Properties of Iowa for a Special Exception for property located at 620-628 Loras Boulevard to split a lot creating a residence with a 3 foot setback from the west side property line, a 5 foot setback from the east side property line, 6 feet minimum required for both setbacks, and permitting the detached garage to remain 2 feet from the rear property line, 6 foot minimum required, in an R-2 Two-Family Residential zoning district.

Bruce Lubben, 620 Loras Boulevard, said he would like to split his property along the center line of an existing two-unit residence. He said this will enable him to sell each half of the duplex off separately and create owner-occupied units versus rentals. He said there would be no change in the status quo regarding traffic or demand on parking.

Board Member Pope asked about the internal layout of the building. Mr. Lubben said that the building contains two fully self-contained residential units.

Staff Member Wernimont outlined the staff report, noting the buildings location on an aerial photo. He said there would be no expansion of the existing building and that all other bulk standards would remain the same.

Board Member McCoy asked what zoning district the property located in and Staff Member Wernimont noted it is in an R-2 Two-Family Residential zoning district.

Board Members discussed the request and felt it was appropriate because there would be no expansion of the building and no additional traffic or demand on parking.

Motion by McCoy, seconded by Golombeski, to approve the special exception request as submitted. Motion was approved by the following vote: Aye – Cremer, Golombeski, McCoy, Pope and Bird; Nay – None.

Docket 51-15: Application of Mahendra K and Geeta M Thakkar for a Special Exception for property located at 2025 Radford Road to construct a 40' by 58' addition 7 feet from the rear property line, 20 feet minimum required, in an R-1 Single-Family Residential District.

Chairperson Bird stated that both of the applicants' requests – Docket 51-15 and Docket 52-15 would be heard simultaneously and voted on separately.

Bob Wilbricht, 13939 Barrington Drive, noted that he and his wife have operated an adult day care at the corner of Pennsylvania Avenue and Palm Court since 2001. He said they would like to expand their business to a new building along Radford Road. He said the new facility will have 15 parking spaces and that most of his clients will not drive but will be transported via minibus.

Board Member McCoy asked why the Wilbrichts did not just rezone their property. Staff Member Wernimont noted that a licensed adult day care requires a Conditional Use Permit regardless of the underlying zoning district.

Bill Burkhart, representing the Dubuque Community School District, expressed concerns with the school district's ability to conduct a prairie burn that he said may affect the subject property. He also expressed concerns with water runoff, stating that he wants the applicants to effectively manage their storm water. He said that he does not want a retaining wall to be built along the property line.

Maurice Schmerbach, 5020 Saratoga Drive, said that he lives one lot removed from the corner of Saratoga Drive and Radford Road in a condominium. He expressed concerns with traffic and access to his property. He said that he has had problems with storm water and mud in his back yard in the past.

Tom Thiltgen said that he owns Little Treasurers Day Care at 2035 Radford Road. He said he is directly adjacent to the subject property and expressed concerns with traffic safety.

Mr. Wilbricht said that he and his wife would do what was needed to manage their storm water. Mariko Wilbricht detailed how traffic would circulate within the existing facility. She noted drop-off and pick-up times and said there should be no traffic conflicts between their facility and the adjacent properties.

Board Member McCoy asked about the school's prairie burn-off and its possible effect on the subject property. Mr. Wilbricht said that this would not create a problem for their facility. He said that they may not need to build a retaining wall. Mrs. Wilbricht noted that they may have up to 60 clients at one time; however, some of their people only stay for a few hours.

Staff Member Wernimont outlined the staff report, utilizing aerial photos and a site plan, noting the building's location and surrounding land use. He said that a site plan will be required for the facility. He noted that the Development Review Team will review the site plan for the facility to ensure that adequate storm water management and safe traffic circulation measures are in place. He noted that the storm water must be managed on the site. He discussed the property's history including former rezonings in the area. He said that the site plan indicated adequate employee parking and drop-off area for clients.

Board Member McCoy said he felt the driveway access was adequate.

Board Member Cremer encouraged the applicants to work with the neighbors to resolve any outstanding issues regarding storm water management and traffic.

Board Members discussed the request and felt it would be appropriate to add a condition regarding storm water.

Motion by McCoy, seconded by Pope, to approve the special exception request to construct a 40 x 58' addition, 7 feet from the rear property line, 20 feet minimum required, in an R-1 Single-Family Residential zoning district with the condition that storm water be managed as per City of Dubuque Standards. Motion was approved by the following vote: Aye – Cremer, Golombeski, McCoy, Pope and Bird; Nay – None.

Docket 52-15: Application of Mahendra K and Geeta M Thakkar for a Conditional Use for property located at 2025 Radford Road to open a licensed adult day care with 130 clients and 15 staff in an R-1 Single-Family Residential District.

The Board discussed the applicant's request for a Conditional Use Permit for an adult day care during the deliberation for Docket 51-15.

Motion by McCoy, seconded by Pope, to approve the Conditional Use Permit to open a licensed adult day care with 130 clients and 15 staff. Motion was approved by the following vote: Aye – Cremer, Golombeski, McCoy, Pope and Bird; Nay – None.

Docket 53-15: Application of Rainbo Oil at 2255 University Avenue to replace existing 25 foot high, 100 square foot freestanding sign with a new 25-foot high, 128 square foot freestanding sign, 20-foot height and 100 square foot maximum permitted, and to add a 3rd freestanding gas canopy sign, two signs permitted, in a C-2 Neighborhood Commercial Shopping Center District.

Keith Wolff, 210 Cedar Cross Road, said that he represented Rainbo Oil Company. He said that Rainbo Oil is in the process of rebranding, and they would be adding a logo sign on the gasoline canopy and removing and replacing the existing freestanding sign. He said they would like to install a 25-foot high freestanding sign and that it will not be higher than the existing sign. He said they would like to place the third helix logo on the freestanding gas canopy.

Board Member Golombeski asked about the location of existing sign. Mr. Wolff said that the new sign would be shifted farther back from University Avenue than the existing sign.

Board Member McCoy asked if the freestanding sign would be lighted. Mr. Wolff said that the freestanding sign would have a message center that would be lighted on both sides.

Board Member Pope asked about the age and condition of the existing sign. Mr. Wolff said it was approximately 12 years old and a bit deteriorated.

Sue Butt, 241 Main Street, said that she owns property across the street from the subject property. She inquired about the 3rd canopy sign. Mr. Wolff noted the location of the 3rd sign upon the canopy.

Staff Member Hemenway presented the staff report, noting that in 2009, C-2 district regulations had been changed reducing the amount of freestanding sign area permitted from 200 square feet to 100 square feet, and the height from 25 feet to 20 feet. He said that the proposed new sign would be 128 square feet in area and 25 feet in height and set farther back from University Avenue than the existing sign. He also noted that the applicant's request is to place a 3rd 10.6 square foot logo sign on the canopy fascia when only two signs are permitted.

Board Member Pope said that she felt it was important that the Board honor sign code as written and that the applicant has not met the criteria necessary to approve a sign variance.

Board Member McCoy said he was concerned regarding the proximity of this sign to the rear of multi-family residences on University Avenue. He said that the lighted sign would flash into the rear windows of the residences.

Board Member Cremer said he had some concern with the digital sign and its effect on the adjacent residential property.

Board Member McCoy asked if the lighted portion of the sign could be one-sided, leaving the blank non-illuminated side toward the residences. Mr. Wolff said that the digital electronic message sign is two-sided and he also noted there is an existing digital billboard directly across the street from the subject property.

Board Member Pope reiterated that she felt that the Board should follow the sign code as written.

Board Member McCoy said that the applicant has not demonstrated a hardship. He said that he is not opposed to a one-sided digital sign and/or to limiting the hours of operation of the illuminated portion of the sign.

Chairperson Bird asked staff to clarify regulation of electronic message signs. Staff Member Hemenway noted that there is a 2-second transition when full animation is allowed and that a minimum of 2 seconds for static time. He noted that the Board has the ability to place conditions on the approval which he said could include hours of operation.

Board Member Golombeski said that she is not opposed to the 3rd logo sign on the canopy but does have concerns with the potential for the illumination and flashing of the freestanding sign. She said she would be in favor of limiting the hours of operation for the lighted sign. She recommended limiting the hours of operation from 6:30 a.m. to 10 p.m.

Board Member Pope referred to the Unified Development Code Article 8 regarding the criteria necessary for granting a variance, stating that she felt the applicant's request did not meet said criteria.

Board Member McCoy reiterated that the sign should meet current code unless the applicant can prove a hardship.

Chairperson Bird said he has no concern with the 3rd sign on the canopy. He noted that the existing freestanding sign could be reconditioned at the same size, height and location. He said he understood the concerns regarding the effect of lighting on the adjacent residential properties.

Board Member Cremer asked Mr. Wolff if he would be willing to consider limiting the illumination to one side of the sign and limiting the hours of operation.

Board Member Golombeski noted that the business currently has a 25-foot high sign

and that she would be okay with replacement at the same height; however, she said she would like to know the exact location of the sign. She said she was also concerned with the increase in sign area to 128 square feet.

Board Members discussed modification to the sign request which would include reducing the size of the sign, confirming its placement on the subject property, limiting lighting to one side and limiting hours of operation. Board Members asked Mr. Wolff if he would be willing to table the request on the freestanding sign and return with a modified sign request. Mr. Wolff agreed to allow the Board to split the request between the freestanding sign and the canopy-mounted logo signs.

Motion by Bird, seconded by McCoy, to table the variance request for the freestanding sign. Motion was approved by the following vote: Aye – Cremer, Golombeski, McCoy, Pope and Bird; Nay – None.

Motion by Cremer, seconded by Golombeski, to approve the 3rd 10.6 square foot logo sign on the gas canopy. Motion was approved by the following vote: Aye – Cremer, Golombeski, and Bird; Nay – McCoy and Pope.

Docket 54-15: Application of Rainbo Oil Company for a Variance for property located at 2360 Central Avenue to add a 3rd freestanding gas canopy sign, 2 signs maximum permitted, in a C-2 zoning district.

Keith Wolff, 210 Cedar Cross Road, said that he represented Rainbo Oil Company. He said that the request is to place a 3rd 10.6 square foot logo sign on the freestanding canopy.

Staff Member Hemenway outlined the staff report, noting that the sign is half the square footage allowed but would exceed the number. He noted that the sign is not illuminated and would have very limited impact on the adjacent properties.

Board Members discussed the request and felt it was appropriate.

Motion by Golombeski, seconded by Cremer, to approve the 3rd freestanding canopy sign. Motion was approved by the following vote: Aye – Cremer, Golombeski, and Bird; Nay – McCoy and Pope.

Docket 55-15: Application of Rainbo Oil Company for a Variance for property located at 4039 Pennsylvania Avenue to add a 3rd freestanding gas canopy sign, 2 signs maximum permitted, in a C-2 zoning district.

Keith Wolff, 210 Cedar Cross Road, said his request is similar to the previous request. He said that he would like the ability to add a 3rd 10.6 square foot logo sign to the canopy fascia on a freestanding gasoline canopy.

Staff Member Hemenway presented the staff report, noting that the sign would be located in a mixed use area on a canopy that faces a busy commercial corridor and that it should have limited impact on the adjacent properties.

Board Members discussed the request.

Motion by Cremer, seconded by Golombeski, to approve the Variance request as submitted. Motion was approved by the following vote: Aye – Cremer, Golombeski, and Bird; Nay – McCoy and Pope.

Docket 56-15: Application of Jonathan McCoy, 261 Main Street, to appeal the Planning Services Department interpretation of the definition and regulation of an audible sign.

Jonathan McCoy, 263 Main Street, said that his intent is to not modify the City Code but to clarify the definition of an audible sign and how said signs are regulated. He distributed an article from the Telegraph Herald that he said shows that businesses in the Old Main area use audible signs to draw patrons to their location. He referred to the definition of an audible sign, noting that external speakers on downtown buildings meet the definition. He said that residents in the neighborhood had concerns about the speakers and the noise they generate. He said that the City's intent is to call this a Police issue but that the speakers are clearly being used as audible signs to solicit and advertise. He said that audible signs are not listed or allowed in any of the City's zoning districts. He referred to letters of support submitted by Rob McCoy and Robert Mulgrew.

Staff Member Hemenway discussed staff's definition and regulation of audible signs and provided photos of exterior speakers on some of the downtown buildings. Staff Member Hemenway referred to the sign code reading the definition of both signs and audible signs, stating that the audible sign has to meet the definition of a sign first, and he felt that test was not met. He said that he felt the intent of the audible sign definition was to provide for signs such as wayfinding and brail signs where there was an audible component. He said that external speakers or audible signs are not regulated in the Unified Development Code as are other signs that have established bulk standards for size, number and height. He said that the proper way to regulate the noise emanating from external speakers should be through Section 6-5.1 of the City Code that refers to noise as a nuisance and how said noise is regulated. He said that it is his interpretation that an exterior speaker is not an audible sign and is not regulated by the Unified Development Code.

Board Member Pope asked Mr. Hemenway to reiterate the City Code regarding regulation of nuisance noise.

Mr. McCoy rebutted staff's interpretation referencing a memo from the City Legal staff regarding regulation of audible signs. He said that staff's definition and interpretation of audible signs such as brail signs was not germane to the issue. He said that the ordinance language clearly states that an external speaker is indeed an audible sign. He said that downtown residents have called the Police regarding the noise generated by the audible signs affixed to outdoor businesses and it has not reduced the disturbance created by such signs.

In response to a question by Chairperson Bird, Mr. McCoy said that the Police response takes anywhere from 15 minutes to four hours, and that he is not aware of any citations being issued regarding noise violations. Chairperson Bird asked about the disturbance in the Main Street area, and asked if it would be the intent to get the speakers turned off or removed. Mr. McCoy said he does not have a problem with signs directing people to birthday parties or garage sales, but that he has issues with noise emanating from audible signs in the downtown area. He said because audible signs are not listed in the Unified Development Code's sign matrix, that they are; therefore, not allowed.

Board Member Pope asked the people in the audience their addresses. The residents said they were from 129, 241, 233 and 190 Main Street. Board Member Pope asked that if the Board were to agree that exterior speakers are audible signs as defined in the Code, then what regulations would apply and where would the Board go from there?

Mr. McCoy said that he would like the audible signs to be regulated by the Planning Services Department and not the Police Department.

Board Member Golombeski asked if the noise emanating from the exterior speakers was just on the weekends. Mr. McCoy said that it is every day of the week.

Staff Member Hemenway referenced the prohibited noises portion of the City Code and the potential for Police to issue citations for disturbing the peace. He said that he is sympathetic the resident's concerns regarding the noise emanating from external speakers and their impact on the Main Street area but that he does not feel this kind of disturbance should be regulated by the Unified Development Code. He noted the Unified Development Code enforcement process for compliance stating that the Police can write a municipal infraction immediately; whereas, the Zoning Enforcement Officer would have to give the offending party a specified period of time to abate the noise, and that the zoning process takes much longer and would be less effective. He said that even though the audible sign is not listed as a permitted sign in the district matrix that does not mean that they are prohibited. He said prohibited signs are specifically spelled out in Article 15-8 of the Unified Development Code.

Board Member Pope asked about advertising and those people who may stand along the roadway signage. Staff Member Hemenway noted that if they stray onto the right-of-way they could be regulated by the City's Engineering Department.

Board Member Pope asked why an audible sign is specifically defined in the Unified Development Code. Staff Member Hemenway said that the consultant hired to craft the 2009 Unified Development Code had added this definition in anticipation of the future use of signs such as wayfinding and brail that have an audio component.

Board Member Golombeski asked staff's opinion of the best way to regulate speaker noise to prevent this type of disturbance. Staff Member Hemenway noted that the neighbors could petition the City Council asking that code language either limiting or prohibiting the use of external speakers on commercial properties be drafted.

Mr. McCoy noted that in 2015, there has been 54 noise complaints between 1st and 5th Streets along Main Street, and that 0 infractions had been issued. He said that he is asking the Board to agree that speakers meet the definition of an audible sign and are; therefore, regulated by the Unified Development Code.

Chairperson Bird asked if Mr. McCoy's intent was to regulate the speaker itself or the sound coming out of the speaker. Mr. McCoy said that every speaker that conveys a message or advertisement or solicitation should be deemed an audible sign. He said that the intent of these speakers is to draw attention to the business.

Board Member Cremer said that he felt that the definition was ambiguous and that a strict definition is not contained in the Code. He said that he felt the fixtures on the exterior of buildings are speakers and not signs. He said that whatever they are, they should be regulated by the Police Department.

Board Member Pope said that she agrees that there are currently no standards regarding the regulation of audible signs in the Unified Development Code. She said the Code should clearly define what an audible sign is.

Board Member Cremer said that he can appreciate both the appellant's and the City's interpretation of the Code.

Chairperson Bird said that it is clear that the City Council has the power to regulate the speakers and the noise in the downtown area.

Board Member Pope said that she felt the Board's charge is to determine if an external speaker meets the definition of an audible sign.

Chairperson Bird asked if the neighbors had approached the City Council regarding the issue. Mr. McCoy said that they have had meetings with Police and that nothing has been done to alleviate the problems with noise.

Staff Member Hemenway noted that even if they were to regulate exterior speakers

through the Unified Development Code as an audible sign, staff would have to approach the City Council and ask for the Code language to be amended to establish bulk standards.

Staff Member Kritz said that if the appellant is intent on changing the Unified Development Code regarding the regulation of audible signs, the current external speakers would be grandfathered. He said; however, if the City Council were to agree to a change in the City Code, they could regulate outdoor speakers without the grandfather status.

Board Members discussed the grandfather status of the existing signs noting that the municipal code may be a better venue for regulating external speakers.

Motion by Pope, seconded by Cremer, to affirm the appellant's interpretation regarding the definition and regulation of an audible sign. Motion failed by the following vote: Aye – Pope, Nay - Cremer, Golombeski, and Bird.

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

Respectfully submitted,

Kyle L. Kritz, Associate Planner

Adopted