

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

5:00 p.m.

Thursday, May 26, 2015

City Council Chamber, Historic Federal Building

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

**Board Members Excused:** None.

**Board Members Unexcused:** None.

**CALL TO ORDER:** The meeting was called to order by Chairperson McCoy 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 28, 2016 Zoning Board of Adjustment meeting were approved by the following vote: Aye – Cremer, Ahlvin, Golombeski, and Pope; Abstain – McCoy.

**Docket 19-16/Special Exception:** Application of Larry Miller for a Special Exception to cover forty-seven (47) percent of the lot with a structure, forty (40) percent maximum permitted, in an R-4 Multi-Family Residential District for property located at Wingate Drive and Eastgate Court (PIN 10-28-207-009).

Larry Miller, 147 Kane Court, outlined his request. He said that he would like to plat a lot using a straight line without having to jog the lot line to gain the additional property area needed. He said he would like to split the private drive that serves the building. He said that he owns all of the adjacent property and that due to the reduced lot area along the curve of Wingate Drive, he had to remove one unit.

Board Members and the applicant discussed the lot configuration. Staff Member Wernimont noted that the lot area was limited by the curvature of Wingate Drive. He said the applicant owns the adjacent property and the request should have little impact on the other adjacent properties.

Board Members discussed the request and felt it was appropriate.

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

**Docket 20-16/Sign Variance:** Application of Teresa L. Fairchild, 137 Bluff Street, for a Sign Variance to allow a twenty-four (24) square foot freestanding sign, 8 square feet maximum allowed, in an OR Office Residential District.

Teresa Fairchild, property owner of 137 Bluff Street, noted that the structure is a multi-tenant office building and that she rents out numerous offices spaces. She said that she would be allowed to put several freestanding signs on her lot but would like to consolidate all signage into one structure.

Board Member Pope asked how many tenant spaces were in her building. Ms. Fairchild said she had six offices spaces. Ms. Fairchild noted that the sign had already been installed.

Board Member Cremer clarified the sign dimensions, noting that it was a 72” by 48” structure.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report, noting that the applicant included a response to the criteria necessary for granting a sign variance with her application. He discussed the sign regulations for the office/commercial and historic districts, noting that each business is permitted a single freestanding sign of up to 8 square feet. He said the applicant’s request is to consolidate the tenant signs on to one freestanding sign.

Chairperson McCoy talked about limiting the sign area per business. Board Member Pope asked about the number of panels on the existing sign.

Staff Member Hemenway asked that, if approved by the Board, each tenant be limited to a maximum of 8 square feet per panel. Board members discussed the request with the applicant and agreed that she would be allowed one freestanding sign with a maximum of 8 square feet per tenant. Board Member Pope discussed the criteria necessary for approving a sign variance.

Motion by Cremer, seconded by Pope, to approve the sign variance request with the conditions that: 1) Only one freestanding sign be allowed on the premises; and 2) Each tenant be allowed a maximum of 8 square feet of sign area on the freestanding sign.

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

**Docket 21-16/Special Exception:** Application of Mark M. Pabst, 3249 Sheridan Road, for a Special Exception to build a 16' x 25' detached garage one (1) foot from the south side property line and ten (10) feet from the front property line, 6' and 20' required respectively, in an R-1 Single Family Residential District.

Mark Pabst, 3249 Sheridan Road, said that he would like to build a garage. He noted the garage dimensions and its location on the lot. He said that the garage will be detached and will be used for storage.

No one spoke in opposition to the request.

Staff Member Hemenway presented the request. He said that the garage will not block the view from adjacent properties. He referred to aerial photos, noting that the property is constrained due to topography and the position of the house on the lot. He said that if a vehicle were to be parked in front of the garage it would project into the public right-of-way almost up to the paved portion of Sheridan Road. He said that sidewalks for Sheridan Road were not required at this time.

Chairperson McCoy asked what distance is needed in front of the garage to safely park a vehicle. Staff Member Hemenway said that 20 feet is the minimum required, but that it often depends on the width of the parkway.

Board Member Pope asked if it is okay for someone to park in the right-of-way. Staff Member Hemenway said that, in general, it is not permissible to park in the public right-of-way other than in eligible on-street parking areas along the street.

Chairperson McCoy said he felt that the neighbors are okay with the encroachment on the side yard based on signed documents provided by the applicant.

Board Members discussed the request, noting that the applicant could shift the garage farther away from the right-of-way or reduce its size to gain the appropriate amount of space between the garage and public right-of-way. Mr. Pabst said that his garage would be approximately 6 feet from the deck. Staff Member Hemenway noted that a paved area could be placed along side of the garage to provide adequate off-street parking without encroachment on the right-of-way.

Board Member Cremer asked if the applicant would be willing to either shift the garage further away from the public right-of-way or reduce its size. Board Members and the applicant discussed possible measures to reduce the size of the garage or move it further from the public right-of-way, which included the possibility of relocating the steps on the attached deck.

Board Member Golombeski noted that 22 feet of depth is the minimum necessary for a functional garage space.

Staff Member Hemenway noted that the driveway to the garage would have to be paved.

Board Members and the applicant discussed the possibility of relocating the garage on the site and reducing its size. Mr. Pabst said he would be willing to do either. Board Members agreed that 15 feet should be the minimum distance between the front of the garage and the property line.

Motion by Ahlvin, seconded by Pope, to approve the Special Exception request with the conditions that: 1) the garage be located a minimum of 15 feet from the front property line; 2) the garage be a maximum of 25 feet in length; and 3) storm water from the garage roof be directed back onto the applicant's property. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski, Pope and McCoy; Nay – None.

**Docket 22-16/Special Exception:** Application of Kenneth W. Miller, Jr., 1820 Scenic View Drive, for a Special Exception to build an attached garage three (3) feet from the east side property line, six (6) feet minimum required, in an R-1 Single-Family Residential District.

Kenneth W. Miller, Jr. 1820 Scenic View Drive, outlined his request noting that he would like to replace an existing carport with an enclosed garage. He said that the eave is approximately 2-feet wide and that the garage wall would be more like 4 feet from the property line.

Staff Member Wernimont stated that the applicant's intent is to remove an existing 12' by 22' carport and replace it with an enclosed garage 3 feet from the east side property line. He discussed aerial photos of the site, noting that most of the neighborhood had garages that were built very close to the property lines. He said some neighbors had enclosed carports and are legally non-conforming. He noted he had not received any input from neighboring property owners.

Board Member Ahlvin clarified that according to the applicant, the building wall would be approximately 4' 6" away, but that did not include the projection of the overhang. Board Members discussed the building wall and overhang in proximity to the plane of the property line.

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

**Docket 23-16/Special Exception:** Application of Richard and Nancy Hess, 122 Princeton Place, for a Special Exception to build a 248 square foot garage addition one (1) foot from the south side property line, six (6) feet minimum required, in an R-1 Single Family Residential District.

Richard Hess, 122 Princeton Place, said he would like to build a garage addition 2 feet from the side property line with a 1-foot overhang. He said the additional garage space is necessary for maneuvering space for his wife who has health problems.

Staff Member Wernimont outlined the request, discussing aerial photos of the site. He clarified that the existing storage shed will be removed or relocated during the garage expansion. He said that the addition was necessary to make the garage more functional for the applicant's wife. He said that the building wall would be approximately 2-feet from the property line, but the overhang would be 1-foot from the plane of the property line. He noted that the applicant's property sits below the grade of the neighboring properties; therefore, stormwater would flow back onto the subject lot. He said that the neighbors at 144 Princeton Place and 98 Princeton Place had phoned him expressing their opposition to the request.

Chairperson McCoy noted that the setback is consistent with other structures in the neighborhood.

Board Member Pope asked the applicant if he would be willing to place the building 3 feet from the property line. Mr. Hess said that he did not want to limit the building size because it would reduce the maneuverability within the garage. Board Member Pope asked if other structures in the neighborhood were 2 feet from the property line. Staff Member Wernimont distributed photos stating that other structures in the neighborhood were built relatively close to the property lines.

Board Members discussed the request and Board Member Ahlvin felt it was necessary for the applicant to clearly demonstrate the property line location and to direct storm water away from the adjacent property.

Motion by Ahlvin, seconded by Pope, to approve the Special Exception request with the condition that the property owner clearly demonstrate the property line to the building official and that storm water from the garage addition be directed onto the subject property. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski, Pope and McCoy; Nay – None.

**Docket 24-16/Special Exception:** Application of Steve Meyer Construction for property located at 1683 Alpha Street, to construct a 10' x 16' front deck ten (10) feet from the front property line, twenty (20) feet minimum required, in an R-1 Single Family Residential District.

Frank Hermsen, Carroll, Iowa, said that he represents his daughter, Stephanie, who lives at 1683 Alpha Street. He said that she would like to replace an existing deck with a somewhat larger, more functional deck. He said that they had looked for other options to build the deck, but they wanted to place it along the front of the house 10 feet from the front property line. He distributed a construction drawing of the deck. He

noted that the existing deck projects 8' 7" from the house, and that the proposed deck would be 10 feet from the house. He said the deck would be 16 feet long, and that it would be flat with railings and no enclosure, so it should not detract from the neighborhood.

No one spoke in opposition to the request.

Staff Member Hemenway explained the request. He noted the rationale for the 20-foot setback but stated that the proposed deck would not block the view from adjacent driveways or the front of adjacent residences. He said that 10 feet is the minimum size for a functional front porch that would enable the property owner to have a table and chairs and fully utilize the deck.

Board Member Pope said that she is not opposed to the open deck design. She asked the applicant to be sensitive to the character of the neighborhood in their construction design.

Board Members discussed the request and felt it was appropriate.

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

**Docket 25-16/Special Exception:** Application of Craig Nesteby, 760 Caledonia Place for a Special Exception to build a single-family home 150' from the front property line and zero (0) feet from the south side property line, fifty (50) feet and three (3) feet are required in an R-2A Alternative Two-Family Residential district.

Craig Nesteby, 703 Hill Street, said that he would like to build a house at the location where a former house burned but with a larger footprint than the original house.

Jonathan Brown, 780 Caledonia Place, noted there is an intervening property between the subject lot and right-of-way, and therefore, a 150-foot setback is necessary. He said he felt strongly that adequate access for fire protection is necessary and that the grade of the driveway is problematic. He said there is an existing lead service line to the property that may be an issue. He said he did not agree with the ability for non-conforming structures to be reconstructed. He stated the existing house was an old converted barn with a kitchen addition. He said he is opposed to the request due to fire safety.

Susan Cronk, 782 Caledonia Place, said that she had concerns with fire safety. She said the previous house had burned down and that the Fire Department could not access it due to its location. She said there was 10-foot driveway easement across her property. She expressed concern with extension of utilities to the site. She noted that

the former property owner had severely damaged her driveway and house foundation. She said she had concerns with truck traffic along the easement during the construction process.

Chairperson McCoy noted that there were other City Codes in place that would dictate construction requirements and utility extensions that the Board was not charged with reviewing.

Board Members discussed the location of the adjacent property owners relative to the subject lot. They discussed the letter submitted by Toby Wisecup, noting that the water service line extended across his property to the subject lot. They discussed fire safety access and noted Mr. Wisecup's concerns with the proximity of the structure to lot lines.

Bob Schlickman, Galena, Illinois, said he had developed a relationship with Ms. Cronk, and felt that she had suffered property damage and had not reached resolution with the property owner. He discussed the large amount of fill that had been placed on the subject lot and partially on Ms. Kronch's lot. He said that he felt the Board should require that the legal issues be resolved prior to any approval.

Mr. Nesteby said that he had spoken with Ms. Cronk and offered a 50/50 split for the driveway repair costs. He said that he has provided Ms. Cronk's attorney with a cost estimate for driveway replacement and that he had not received a response from her attorney.

Chairperson McCoy said that private access to the property is not necessarily a Board concern.

Staff Member Wernimont outlined the property history. He read the letter provided by Mr. Wisecup. He noted a letter submitted by Cindy Murguia at 720 Caledonia in support of the project. He discussed the old Sanborn maps, noting that the subject house that had previously burned had been the first house built in the neighborhood, and that the houses around it had been built subsequently. He discussed the water utility easement across Mr. Wisecup's property. He said that the subject lot has no frontage and that current regulations would not allow a lot to be platted with no frontage. He discussed the non-conforming status of the property and the building. He said that the proposed expansion triggered Board review as the building would be built outside of the former footprint and not meet the R-2A setback requirements. He said the Fire Department expressed concerns with no address at the street because it makes the house difficult to find.

Board Member Ahlvin asked for the address clarification. Board Members discussed the expansion as it affected the grandfather status of the building and its setbacks.

Staff Member Wernimont read the non-conforming section of the Unified Development Code.

Board Member Ahlvin asked if the house could be shifted to meet the required setback. Mr. Nesteby said that he would not want to shift it because it would be closer to Ms. Cronk's property. Board Member Ahlvin noted that a larger structure could pose additional fire safety issues. Board Members discussed the setback options.

Motion by McCoy, seconded by Pope, to approve the Special Exception request as submitted. Motion carried by the following vote: Aye – Cremer, Golombeski, Pope and McCoy; Nay – Ahlvin.

**ITEMS FROM BOARD:**

Board Member Pope asked if staff could explore options regarding consolidation of signage in an effort to limit the number of signs permitted per premises. The Board discussed current sign regulations.

Chairperson McCoy asked staff if they have had time to explore clarification of window signage. Staff Member Hemenway said that they were looking into window signage, including projected signage issues in an effort to stay head of the curve.

**ITEMS FROM STAFF:**

Staff Member Kritz referred to a memorandum regarding the City Council's request that the Zoning Advisory Commission consider adding microbreweries, wineries, and distilleries as a conditional use in the Historic Millwork District. Staff asked the Board for their input, noting that any conditional use request would be heard by the Board.

Board Member Pope stated there appears to be conditions already established in City codes and ordinances that address the issues raised regarding operation of a microbrewery.

Chairperson McCoy said that he felt that a microbrewery business should not be held to higher standards than other businesses within the district. He said that he felt that truck traffic, for example, was ubiquitous throughout the district, and that a microbrewery would not significantly increase such activity. He said that he felt that all properties in the district should be held to existing City standards.

Staff Member Hemenway noted that there are existing City codes that cover many of the concerns expressed by residents. He said that the conditional use process is intended to help mitigate potential negative impacts often associated with commercial establishments located in mixed use areas. He said that the conditional use process provides for an extra layer of review.



Staff Member Kritz noted that the Historic Millwork District is unique in that there are no private covenants that regulate development within the district.

Board Member Pope discussed the general conditions established for conditional use permits.

Staff Member Hemenway discussed the difference between a brew pub and a microbrewery. He said that the brew pub cannot wholesale its product.

Staff Member Kritz noted that the amendment proposed allowing microbreweries as a permitted use is district-wide and not property specific.

Chairperson McCoy said that he is opposed to requiring a conditional use permit for a microbrewery in the Historic Millwork District because it selectively picks on one business.

Board Member Pope discussed the potential volume produced by a microbrewery and its distribution.

Board Members Pope and Cremer expressed concerns with placing conditions on a business that would be difficult to enforce.

Staff Member Kritz noted that the issues regarding the potential impacts of a microbrewery were raised at the City Council meeting. He said that the City Council referred the request back to the Zoning Advisory Commission for their consideration. He said the Zoning Advisory Commission will review the request on June 1<sup>st</sup>, and their recommendation will be forwarded to the City Council at their June 6<sup>th</sup> meeting. He said that if microbreweries approved as a conditional use, the request would likely be heard by the Zoning Board of Adjustment at the June 23<sup>rd</sup> meeting.

Board Member Pope said she was not in favor of placing any further conditions on a conditional use for a microbrewery.

Board Member Ahlvin said that he felt a conditional use permit would be appropriate for a microbrewery in the warehouse district, but that he did not think it was necessary to place the two additional conditions regarding noise and odor on the CUP.

**ADJOURNMENT:** The meeting adjourned at 7:26 p.m.

Respectfully submitted,

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Kyle L. Kritz, Associate Planner

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Adopted