



Approved

## MINUTES

### CITY OF DUBUQUE ZONING BOARD OF ADJUSTMENT

#### REGULAR SESSION

4:00 p.m., Thursday, March 26, 2009

City Council Chamber, Historic Federal Building

**Board Members Present:** Board Members Randy Klauer, Jeff Cremer, Bill Gibbs and Heath Hutchinson.

**Board Members Excused:** Chairperson Mike Ruden.

**Staff Members Present:** Guy Hemenway, Kyle Kritz and Wally Wernimont

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

**CALL TO ORDER:** The meeting was called to order by Vice Chairperson Randy Klauer at 4:00 p.m.

**MINUTES:** Motion by Cremer, seconded by Gibbs to approve the minutes of the March 3, 2009 meeting. Motion carried by the following vote: Aye – Klauer, Cremer and Gibbs; Nay – None; Abstain - Hutchinson.

## SPECIAL EXCEPTIONS

**DOCKET 06-09:** Application of Paul & Rhonda Kirkegaard for a special exception for property located at 521/541 W. 3<sup>rd</sup> Street to split a lot creating 2 lots with 760 square feet of area and 0 feet of frontage, 5,000 square feet and 50 feet minimum required respectively; and to permit a 0 foot side yard setback for a legally non-conforming garage, 4 feet minimum required, in an R-3 Moderate Density Multi-Family Residential zoning district.

Paul and Rhonda Kirkegaard presented their request to the Board. They explained that in the future, they will be selling the properties and moving. They said that they want to divide the garages and split the lot so that one garage/lot can be sold along with 521 W. 3<sup>rd</sup> Street and the other garage/lot can be sold along with 541 W. 3<sup>rd</sup> Street. They explained the current off-street parking situation in the neighborhood. They reiterated that when the lot is subdivided that they will sell 1/2 of the garage to each property. They said that they are proposing to demolish the existing garage and construct 2 two-car garages on the lot with a common wall. He explained that the detached garages will provide off-street parking for 521 and 541 W. 3<sup>rd</sup> Street. Mr. Kirkegaard presented a photo of the existing garage to

the Board. Board Member Gibbs asked about the turn-around located at the end of the dead-end alley. The Board discussed with the applicant the existing parking configuration in the neighborhood. The Board also asked about the current use of the properties. Mr. Kirkegaard said that the two properties are single-family homes. He explained that the detached garage currently is being used by the two single-family homes.

No one spoke in opposition to the request.

Staff Member Hemenway reiterated the special exception request. He explained that the applicants are proposing to subdivide a lot so detached garages can be used to provide parking to the two single-family homes. He discussed the legal non-conforming status of the garage. He explained requirements for lot size and required frontage. He explained that the detached garage will provide parking to the adjacent properties and that this will allow them to meet the off-street parking requirements.

Vice Chairperson Klauer asked about parking requirements for the single-family homes. He asked if there is a way that the Board can place conditions that would require that each half of the detached garage be tied to the two single-family home lots. Staff Member Hemenway said that the Board can place a condition on the lots that requires that  $\frac{1}{2}$  of the subdivided lot is dedicated to each property. The Board discussed how this would be recorded.

Motion by Gibbs, seconded by Cremer, to approve the special exception request to split a lot creating 2 lots with 760 square feet of area and 0 feet of frontage, 5,000 square feet and 50 feet minimum required respectively; and to permit a 0 foot side yard setback for a legally non-conforming garage, 4 feet minimum required, in an R-3 Moderate Density Multi-Family Residential zoning district--with the following conditions: 1) That the City Building Inspector inspect the new or rebuilt garage to determine structural soundness; and 2) that the east  $\frac{1}{2}$  of the lot be dedicated to the residence at 521 W. 3rd Street and the west  $\frac{1}{2}$  of the lot be dedicated to the residence at 541 W. 3rd Street. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 07-09:** Application of Kevin Brandel for a special exception for property located at 2417 Broadway to build a 30 foot by 40 foot 1,200 square foot detached garage, maximum 1,000 square feet permitted, in an R-1 Single-Family Residential zoning district.

The applicant requested, in writing, that his application be tabled.

Motion by Gibbs, seconded by Cremer, to table Docket 7-09 to a future meeting. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

City of Dubuque Zoning Board of Adjustment

March 26, 2009

Page 3

**DOCKET 08-09:** Application of Michelle Mihalakis for a special exception for property located at 2160 Elm Street to construct an SRO 6 feet from the front property line (Elm Street), 20 feet required, in an OR Office Residential zoning district.

Michelle Mihalakis presented her application to the Board. She explained that she received previous approval for construction of an SRO and now she is requesting to reposition it on the lot in order to improve the solar exposure of the building.

No one spoke in opposition to the request.

Staff Member Wernimont outlined the request. He discussed the previously approved special exception. He explained that the building has been repositioned and, therefore, requires approval of a new special exception. He said that the parking lot may be reconfigured. He said that he spoke with the neighbors across Elm Street and that they are not opposed to the request.

Motion by Gibbs, seconded by Cremer, to approve the special exception request to locate an SRO 6 feet from the front property line (Elm Street), 20 feet required, in an OR Office Residential district. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 09-09:** Application of Tom Schreiber for a special exception for property located at 416 Raymond Place to add a 2<sup>nd</sup> story addition over the existing house footprint, 6 feet from the front property line, 20 feet required, in an R-3 Moderate Density Multi-Family Residential zoning district.

Tom Schreiber spoke in favor of his request.

Staff Member Wernimont presented photos and a contour map of the site.

Mr. Schreiber said that he wants to add a one-story addition over the existing footprint of the house. He explained that the first floor area will be used for a garage. He discussed the building layout and setbacks. He said that he would like to have the addition located away from the bluff edge. He referred to approval of a reduced setback for a six plex on the adjacent property. He said on-street parking is limited in this neighborhood. He said that the proposed second-story addition will not interfere with the views from adjacent properties.

Sheila Frank, 1220 Miller Road, representing James & Leona Grant Trust, who own 413 and 415 Raymond Place, spoke in opposition to the request. She said views of the downtown and the river would be blocked by the second story addition. She discussed on-street parking and property values in the neighborhood.

The Board discussed the elevation of the adjacent properties. Mr. Schreiber said his addition will not interfere with the view from the adjacent properties.

Staff Member Wernimont outlined the staff report. He discussed aerial photos and the special exception granted to the adjacent property for the six-plex. He said that the proposed structure will meet building height requirements. He explained that the addition will have similar setbacks as the existing house and will meet the side yard setback.

Board Member Cremer asked about the building height and its location. Staff Member Wernimont explained that the maximum permitted building height in an R-3 Moderate Density Multi-Family Residential zoning district is 30 feet. He explained how building height is calculated. He said that no rendering has been submitted of the proposed building, but that the Board can require one.

Mr. Schreiber presented an architectural rendering of the proposed addition to the Board. The Board reviewed the architectural rendering of the building and discussed various roof designs.

Motion by Gibbs, seconded by Cremer, to approve the special exception for property located at 416 Raymond Place to add a 2<sup>nd</sup> story addition over the existing house footprint, 6 feet from the front property line, 20 feet required, in an R-3 Moderate Density Multi-Family Residential zoning district. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 10-09:** Application of Thomas Kuhle for a special exception for property located at 1500 N. Grandview to construct a deck 1 foot from the front property line (Fillmore Street) and build a 990 square foot garage, 750 feet maximum allowed, 4 feet from the north and east side property lines, 6 feet required, in an R-1 Single-Family Residential zoning district.

Thomas Kuhle said that he is proposing to tear down an existing detached garage and build a new deck and a 30 foot by 33 foot detached garage. He said that the garage will be located 4 feet from the north side property line with access to the alley. He said that, with the addition of the deck to the house, the new building footprint will be larger than the proposed garage.

Staff Member Wernimont presented photographs and aerial photos of the site to the Board. He discussed the site layout and alley access to the property. He explained that the applicant is proposing to replace an existing small garage. He discussed storm water runoff for the site. He recommended that, if the Board approves the special exception, the existing detached garage be removed.

Motion by Gibbs, seconded by Cremer, to approve the special exception request to construct a deck 1 foot from the front property line (Fillmore Street) and build a 990 square foot garage, 750 feet maximum allowed, 4 feet from the north and east side property lines, 6 feet required, in an R-1 Single-Family Residential zoning district, with the following conditions: 1) That storm water be adequately managed; and 2) that the existing garage be removed. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**CONDITIONAL USE PERMITS:**

**DOCKET 11-09:** Application of ABC Learning Early Childcare / Dennis Powers for a conditional use permit for property located at 3100 Cedar Crest Ridge Ste. 3-5 to open a licensed childcare center with 50 children and 10 employees on the maximum shift, in a C-3 General Commercial zoning district.

Melissa Donovan, 3560 Lunar Drive, representing ABC Learning Early Childcare explained her request to the Board. She said that her contractor, Jim Bushman, is also present. She explained that the site has adequate parking and drop-off area. She said that she has received approval from the Fire Department, Building Department and the State for the daycare.

The Board reviewed photos of the site.

No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report. He reiterated the conditional use permit request. He explained that licensed child care centers require conditional use permits. He discussed the difference between child care centers located in residential districts and those located in commercial districts. He discussed the parking lot configuration and drop-off area. He said that the submitted site plan shows a phased development for 3100 Cedar Crest Ridge. He discussed the location of the outdoor play area noting that, if the building is expanded, the play area will need to be relocated.

The Board reviewed the criteria for granting a conditional use permit.

Vice Chairperson Klauer said that he felt that the request meets the criteria for granting a conditional use permit.

Motion by Cremer, seconded by Gibbs, to approve a conditional use permit to allow a licensed childcare center with 50 children and 10 employees on the maximum shift, in a C-3 General Commercial zoning district, as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

**DOCKET 12-09:** Application of Radio Dubuque / Nativity Parish for a conditional use permit for property located at 1225 Alta Vista to erect a 75 foot high radio communication tower in an OS Office Services zoning district.

Tom Parsely, representing Radio Dubuque at 346 W. 8<sup>th</sup> Street, presented the request to the Board. He explained that the property was rezoned to OS Office Services zoning district to allow Radio Dubuque to construct a new office. He said that Radio Dubuque is the owner of four radio stations. He said that they need a direct line of sight to the four transmitters located in Wisconsin and Iowa. He explained that the height of the tower needs to be extended in order to transmit to a tower in East Dubuque, Illinois. He said that the tower will not be painted red and white. He said that the tower will be a steel gray color. He explained that the tower will not have guy wires and will not be required to be lit. He said that the tower will be approximately 10 feet above the height of the church steeple. He said that the trees that will remain on the site, contrary to what is indicated on the site plan.

The Board asked Mr. Parsely about the antennae location. Mr. Parsely said that there is an existing antennae located on top of the building downtown. He explained that the existing facility has a direct line of sight to the transmitting facilities in Kieler, Wisconsin and East Dubuque, Illinois. He said that the line of sight to the transmitter on Highway 20 is limited and that the signal is routed to it.

David Messner, 1339 Alta Vista Street, spoke in opposition to the request and presented a petition with 109 signatures to the Board. He distributed a photo of a 75 foot tower. He said that the proposed tower is out of character with the neighborhood. He said that the tower is surrounded by residential development. He said that when Radio Dubuque initially went through the rezoning process, the neighbors expected that an antennae or satellite dish would be located on top of the building, not a 75-foot high tower.

Dan McDonald, Greater Dubuque Development Corporation, 300 Main Street, spoke in favor of the request. Mr. McDonald explained that Radio Dubuque has followed the appropriate process for rezoning. He said that the Zoning Advisory Commission and City Council knew that a tower would be required at this site. He said that Radio Dubuque provides a needed service to the City.

Dirk Voetberg, 779 University Avenue, spoke in opposition to the request. He said that when the rezoning request was brought to the City Council, a 50-foot high antenna located on the building was discussed. Mr. Voetberg said he is not opposed to having Radio Dubuque at this location.

Bennett Cook, 1395 Alta Vista Street, spoke in opposition to the request.

City of Dubuque Zoning Board of Adjustment

March 26, 2009

Page 7

Dina Kurt, 1070 Melrose Terrace and member of Nativity Parish, explained that she was not aware of the tower proposal until Wednesday, March 25, 2009. She said she is opposed to the height of the tower. She said that Father Thoman signed a contract or a document permitting a 50-foot high tower. She explained that the tower they are proposing to construct is within 1,000 feet from a historic preservation district. He said that the tower would not be lit; however, that does not address safety requirements for helicopter flights to Finley and Mercy Hospitals. She said that Finley Hospital was not aware of the proposed tower. She expressed concerns with the tower casting shadows onto the adjacent properties. She said that the tower does not fit with the residential character of the neighborhood.

Connie Twining, 421 N. Booth Street, spoke in opposition to the request. She said she is a member of Nativity Parish. She explained that she is not opposed to Radio Dubuque; however, she is opposed to the height of the tower. She said that the tower will diminish property values.

Board Member Gibbs asked if there is a school located in the neighborhood. Ms. Twining said that Nativity Parish no longer operates a school; however hand in hand preschool is located across the street from the proposed site.

Mike Gibson, 160 S. Grandview Avenue, spoke in opposition to the request. He referred to previous rezoning attempts for the property. He said that he is in favor of Radio Dubuque's project and is excited to have it at this location. He said that he was not aware of the proposed tower until last week. He referred to a letter that he submitted. He explained that he has concerns regarding lighting strikes, the proximity to the school and daycare, and the safety of the flight paths for medical flights to the hospitals. He also discussed the potential impact of the tower on the skyline as viewed from the river.

Jim Gonyier, 935 Oxford Street, explained that he is happy that the trees will remain on the site. He said that at the Zoning Advisory Commission meeting, a 50-foot tower was discussed. He wondered if the radio tower in East Dubuque, Illinois could be raised instead of raising the tower at this location.

Cindy Steinhauser, 450 Alpine Street, spoke in opposition to the request. She said that the City Council felt that the discussion only included a 50-foot high tower. She said that she was not aware that a satellite dish would be located on the tower. She discussed heights of structures in the neighborhood. She explained that a 50-foot high antenna would be tolerable, because of the height of the adjacent structures. She discussed possible partnerships with the owners of taller structures located in the neighborhood that may accommodate the tower.

Board Member Gibbs asked about the building located across Alta Vista Street from the proposed site. Ms. Steinhauer said that the building is the Visitation owned by Loras College.

Marilyn Taylor, 1340 Alta Vista Street, spoke in opposition to the request. She said she has concerns about access to the tower from the ground. She said that she would like to see a security fence placed around the tower.

Robert Hess, 1690 Alicia Street, said he is a real estate professional. He said that the 75-foot tower located in the neighborhood will have an adverse impact on the adjacent properties. Vice Chairperson Klauer asked about marketing property in a neighborhood where a tower is built. Mr. Hess said that he has been with people who do not want to purchase property close to a tower. Vice Chairperson Klauer asked about the impact to the property at this location. Mr. Hess said that he cannot verify the impact without the use of his computer and comparables.

Mary Lynn Neuhaus, 1595 Montrose Terrace, said that she is a member of the Nativity Parish. She spoke in opposition to the tower. She said that she has no objections to Radio Dubuque, but that she is opposed to the height of the tower. She said that she is a communications professor at Loras College and understands the need for the tower. She said that she would like to see it located on the building and not on the ground. She discussed the view to the tower from the Mississippi River.

Greg McGinn, 1125 Glen Oak Street, explained that he is the finance director at Nativity Parish. He said that the Nativity Church building is approximately 80-feet tall. He said that Radio Dubuque is a good fit for this neighborhood. He explained that the tower will be located over 90 feet from University Avenue and if the tower were to fall, it would only fall onto the Rectory or property that Nativity Parish owns. He said that Nativity Parish is in favor of the request.

Len Hall, 921 Rose Street, spoke in favor of request. He explained that he is a Nativity parishioner and that he is a Parish Council member.

Keisha Wainwright, 264 Alpine Street, said she is a former president of the Langworthy District Neighborhood Association. She explained that the Langworthy District Neighborhood Association is opposed to the tower. She expressed concerns with the potential lowering of property values in the neighborhood.

David Messner said that Nativity Parish was not aware of the proposed 75-foot tower.

Board Member Cremer asked if Nativity Parish was notified of the tower height. Mr. Messner said it appears that the initial request for a 50 foot high tower was changed.

Mr. Hall said that Perry Mason of Radio Dubuque said that the proposed tower will be 75 feet high at a Parish Council meeting.

Mr. Parsely explained that Radio Dubuque originally submitted their conditional use permit when they submitted the rezoning request. He said that their engineer initially said that a 50-foot high tower would work; however, after the property was rezoned, it was determined that a 75-foot high tower was needed. Mr. Parsely reiterated that the tower will not be required to be lit. He asked if the Board could table the vote so that he can address the concerns raised by the neighbors.

Vice Chairperson Klauer asked if the Board had the ability to table the request. Staff Member Kritz said that they did. Board Member Gibbs asked Radio Dubuque to explore other possibilities for broadcasting their signal. Vice Chairperson Klauer explained that there are only four Board members present and that the Board should have five members present when they vote on this request. He asked Mr. Parsely to research different ways to broadcast the signal in order to reduce the height of the tower. Board Member Cremer said that there is an opportunity to make accommodation and compromise regarding the height of the tower.

Motion by Gibbs, seconded by Cremer, to table the conditional use request to the next meeting. Motion carried by the following vote: Aye – Cremer, Gibbs, Klauer and Hutchinson; Nay – None.

**VARIANCES:**

**DOCKET 13-09:** Application of Milton & Judith Boyes for a variance for property located at 1937 Washington Street to build a commercial addition 0 feet from the front property line, 10 feet required, and provide 0% green space, 14% green space required, in a C-2 Neighborhood Shopping Center zoning district.

Milton Boyes reviewed his request. He explained that he is proposing to construct a commercial addition 0 feet from the front property line. He discussed the green space located on the lot and in the neighborhood.

No one spoke in opposition to the request.

Staff Member Wernimont presented the staff report. He reviewed an aerial photo of the site. He discussed the existing structures in the neighborhood, demolition of the single-family home, and existing neighborhood conditions. He discussed neighborhood history and the legal non-conforming status of the adjacent residence. He said that the proposed addition will have a three-foot setback from the adjacent single-family lot. He explained that a site plan will be required for the addition and that storm water management will be reviewed.

City of Dubuque Zoning Board of Adjustment

March 26, 2009

Page 10

Motion by Gibbs, seconded by Cremer, to approve a variance for property located at 1937 Washington Street to build a commercial addition 0 feet from the front property line, 10 feet required, and provide 0% green space, 14% green space required. Motion carried by the following vote: Aye – Klauer, Cremer, Hutchinson and Gibbs; Nay – None.

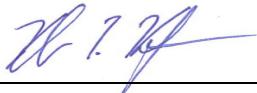
**WORK SESSION:**

Unified Development Code: Article 11 Land Subdivision, Article 12 Site Development and Proposed TND Traditional Neighborhood District Overlay and Design Guidelines.

Staff Member Kritz briefly outlined the proposed changes for Articles 11 and 12 of the UDC. The Board noted that they could provide written comments to staff. Vice Chairperson Klauer suggested that Article 11 and Article 12 be reviewed at next month's meeting.

**ADJOURNMENT:** The meeting adjourned at 6:45 p.m.

Respectfully submitted,



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Kyle L. Kritz, Associate Planner

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Adopted—April 23, 2009