

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

5:00 p.m.

Thursday, November 15, 2018

City Council Chamber, Historic Federal Building

Board Members Present: Vice Chair Jeff Cremer, Board Members Keith Ahlvin, Bethany Golombeski, and Joyce Pope; Staff Members Guy Hemenway, Kyle Kritz and Wally Wernimont.

Board Members Excused: Chairperson Jonathan McCoy.

Board Members Unexcused: None.

CALL TO ORDER: The meeting was called to order by Vice Chair Cremer 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: Motion by Golombeski, seconded by Ahlvin, to approve the minutes of the October 25, 2018 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Ahlvin, Golombeski and Cremer; Nay – None; Abstain – Pope.

Docket 42-18/Special Exception (tabled): Application of Ron Fishnick, 2554 Pinard Street, to construct a 1,118 square foot attached garage, 880 square feet maximum allowed, and 15' from the front property line, 20' minimum required, in an R-2 Two-Family Residential zoning district.

Becky Johnson, 2920 Balke Street, said that she represented Mr. Fishnick. Vice Chair Cremer noted that all but one of the Board members had heard the case at the last Board meeting.

Staff Member Hemenway said that Mr. Fishnick told him that he would agree to move the garage 20 feet back from the front property line, and place the garage doors on both the west and north building walls in an effort to address the concerns raised by the Board at the last meeting. Staff Member Hemenway reiterated the request, noting the status of the unplatted Pinard Street right-of-way. He said that the conditions requested by the Board at the last meeting had been met by Mr. Fishnick.

The Board discussed access to the adjacent lots. Staff Member Hemenway stated that because Pinard Street is private property and not a platted City street or alley, it is

governed by civil law regarding easements. Board Members discussed visibility issues regarding vehicles backing out of the proposed garage. Board Members discussed the request and felt that the conditions proposed by Mr. Fishnick would satisfy their concerns.

The Board discussed how to state the conditions. Staff member Hemenway said that the Board could state that the request was approved for a 20-foot setback from the front property line and require that the garage doors be located on the north and west garage walls.

Motion by Golombeski, seconded by Pope, to approve the Special Exception request with the conditions that:

- 1) The garage be placed a minimum of 20 feet from the west property line; and
- 2) The garage doors be located on both the north and west walls.

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

Docket 44-18/Conditional Use: Application of Shota 2, Inc., 1450 Loras Blvd., to expand an existing gas station/convenience store in a C-1 Neighborhood Commercial zoning district.

Reggie Jones said that he represented Shota 2, Inc., 1450 Loras Blvd. He said that their intent is to add a walk-in cooler on the backside of the building. Vice Chair Cremer asked if the addition approved in 2017 on the west side of the building had been built. Mr. Jones said that they are moving the cooler to the rear of the property and that they may build the west side addition at some point in future.

Larry Hoelscher, 1330 Nowata Street, said that he had attended the 2017 meeting for the addition proposed for the west side of the building. He said he had concerns with light from cars parked on the west side of the building shining into the residences along Nowata Street. He said that at that time the Board required that a fence be placed at the end of the parking area to shield the adjacent properties from headlights. Mr. Hoelscher said that the fence had been erected and then dismantled and he said he would like to ensure that, if approved, the fence be replaced. He said he had concerns with soil erosion from the construction site, noting that mud and gravel had washed out onto the adjacent property's sidewalks.

Mr. Jones stated the property owner has no objections to erecting the fence as directed and managing any soil erosion from the site.

Board Member Pope asked how long the construction project would take. Mr. Jones said that they would like to install the cooler immediately after approval.

Staff Member Hemenway noted receipt of a letter from Jane Schmitt, 1377 Wood Street, in opposition to the request. He said that although Ms. Schmitt asked for anonymity, he told her that anonymity could not be provided because any letter submitted to the Zoning Board of Adjustment at the public hearing would be public record.

Staff Member Hemenway outlined the staff report, discussing the terms of the previous request. He said that as the addition approved in 2017 had not been built the conditions, other than screening the dumpster, had not been implemented. He noted that the proposed cooler addition would be built at the rear of the building. He said that a building permit for the addition had not been applied for. He discussed the reasons that gas stations located in C-1 Neighborhood Commercial districts require a conditional use permit noting that they can generate excessive noise, activity, traffic and demand on parking and bright lighting in what is often a residential setting.

He explained the size and location of the proposed addition, noting that the industrial-style cooler would be placed 10 feet closer to the adjacent residential property than the current building wall. He said that the previous conditional use permit granted by the Board is still in effect, and if the current request is denied, the original request would still be valid. He said that the Board can place any conditions on approval that they feel are necessary to mitigate any negative impacts the addition may cause.

Staff member Hemenway recommended that, if approved, the Board require that; 1) no lighted wall-mounted signage be permitted on the buildings west, south and east walls; 2) a privacy fence be installed on west side of the building to shield the adjacent residential properties from headlights; and, 3) landscaping be placed along the south side of the addition to partially screen the proposed cooler.

Board Members discussed the request. Board Member Ahlvin said that had the previous building request been built and not caused problems he may be more prone to approve the current request. He said that the proposed addition may have an impact on the adjacent residential properties.

Motion by Ahlvin, seconded by Cremer, to approve the Conditional Use Permit request with the conditions that:

- 1) No lighted wall-mounted signage be permitted on the buildings west, south and east walls;
- 2) A privacy fence be installed on west side of the building to shield the adjacent residential properties from headlights; and
- 3) That landscaping be placed along the south side of the addition to partially screen the proposed cooler addition from the adjacent residential properties.

Motion was denied by the following vote: Aye – None; Nay – Ahlvin (citing Criteria H), Pope (citing Criteria F & H), Golombeski (citing Criteria G & H) and Cremer (citing Criteria G).

Docket 45-18/Special Exception: Application of Kim and Sue Reiter, 3460 Kimberly Drive, to allow a 7-foot high fence to remain in the front yard (Asbury Road), 4-foot maximum permitted, in an R-1 Single-Family Residential zoning district.

Kim Reiter, 3460 Kimberly Drive, explained his request to the Board. He said that the six-foot high fence had been in place for nine and a half years. He said that when sidewalks were installed along Asbury Road, the vegetative screening had to be removed; thus, eliminating his privacy. He said that the fence was installed to provide privacy in the back yard, cut down on vehicle noise, and to prevent trash from blowing from the street into the rear yard. He said that he had gone through a process nine and a half years ago that required the neighbor's signatures that he thought approved the fence.

Adrian Appelman, 3468 Kimberly Road, spoke in favor of the request. He said that the fence does not impact visibility to the street from the adjacent properties. He said that he moved to the property four years ago, and that the fence was already in place at that time.

Staff Member Hemenway presented the staff report. He said that staff received a complaint regarding the fence. He said that the Zoning Enforcement Officer investigated and; therefore, an enforcement action was undertaken facilitating the need for a Special Exception. He said that while a building permit was not required for fences, they still cannot exceed the maximum height allowed.

In response to a concern raised by Mr. Reiter, Staff Member Hemenway said that the fence at 3440 Kimberly Drive had received a Special Exception to build in excess of four feet along Asbury Road frontage. He noted that no vehicles back out onto Asbury Road from the Kimberly Street neighborhood and that the adjacent houses are oriented toward Kimberly Drive. He noted that there are 14,000 vehicle trips per day along Asbury Road and the six-foot high fence helps to visually screen pedestrian and vehicular traffic and the noise generated by the vehicles. He said the fence will provide privacy to the back yard.

Board Members discussed the request and felt it was appropriate.

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

Docket 46-18/Special Exception: Application of Adrian and Jocelyn Appelman, 3468 Kimberly Drive, to allow a seven-foot high fence to remain in the front yard (Asbury Road), four-foot maximum allowed, in an R-1 Single-Family Residential zoning district.

Mr. Appelman had spoken regarding his request during the former special exception discussion for 3460 Kimberly Street. Board Members agreed that the fences adjoin and that all the circumstances were the same.

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

Docket 47-18/Special Exception: Application of Gary Rose, 2126 Graham Circle, to build a 9.5' x 10' attached deck 2.5 feet from the east side property line, 6-foot minimum required, in an R-1 Single-Family Residential zoning district.

Lottie and Gary Rose, 2126 Graham Circle, detailed their request. They said they would like to extend their deck giving them more room and access to the rear of their property. Mrs. Rose said that the reconfigured deck would be more aesthetically pleasing. She stated she was surprised by the letter of opposition from the neighbor, Marty Till at 2128 Graham Circle, as she had spoken with him and at the time he did not oppose their project. She said that the deck will be approximately three feet from the side property line. She said that the letter submitted by neighbor was somewhat redundant in that he mentioned property value three times.

Mrs. Rose said she felt the reconfigured deck would increase the property value and not have a negative impact on the adjacent property. She said that there is existing shrubbery that helps screen the property. She said that the proposed deck will be lower in elevation than the existing deck and will not compromise the privacy of the adjacent property. She said it would be difficult to increase the setback and still have the deck be functional.

Board Members discussed the potential deck designs. Staff Member Wernimont noted the letter from Marty Till, 2128 Graham Circle, in opposition to the proposal. He said that the deck, as proposed, would be of an open design, be built off the back side of the house and would be further away from the adjacent residence. He said that it would be the same width as the existing deck with a step down. He said the Board can consider conditions regarding the deck that could include a privacy fence or vegetative screening.

Board Member Pope recommended that the Roses' speak with their neighbor regarding screening and then come back to the Board.

Board Member Ahlvin asked if the applicants would agree to a privacy fence. The applicants said they were hesitant to put up a seven-foot high privacy fence along the

property line because they felt it would be more imposing than the deck itself. Board Member Pope recommended the applicants consider a six-foot high screening fence or vegetation. The applicants both felt the fence would not be aesthetic and would detract from the overall appearance.

Board Members asked if the Roses' would consider tabling their application in an effort to work out a compromise agreement with the adjacent property owner regarding screening and deck design. The applicants agreed.

Motion by Cremer, seconded by Golombeski, to table the Special Exception request to the next regular meeting. Motion carried by the following vote: Aye – Ahlvin, Pope, Golombeski and Cremer; Nay – None.

Docket 48-18/Special Exception: Application of Primos Properties, 514 Kaufmann Avenue, to build a 1,200 square foot garage, 1,000 square foot maximum permitted, in an R-1 Single-Family Residential zoning district.

Tom Herbst said that he represented Lorenzo Dominguez, 2616 Lobo Lane. He said that Mr. Dominguez's request is to build a large garage in the rear yard. He said that he has worked diligently to remodel the house and clean-up the property, including removing vegetation. Mr. Dominguez said that he is willing to move the garage out of the flood plain, if necessary. He said that his intent is to store his cars. Mr. Herbst said that Mr. Dominguez has a large family and they need additional parking and storage.

Staff Member Wernimont reiterated the request, noting that the proposed garage will be 1,200 square feet, where 1,000 square foot maximum is permitted. He noted the flood plain's location on the subject property. He said that the subject lot is very large and that the garage would not be out of scale. He said that all of the structures on the subject property cover very little of the lot. He noted flood plain regulations for this property, stating that as base flood elevations had not been established, the applicant would have to establish base elevations and then elevate the structure one-foot above the 100-year flood plain. He said that the applicant can also shift the structure to be out of the flood plain. He said that the driveway to the garage would have to be paved, and that the garage could not be used for commercial purposes. He said that the Board could approve as shown or require that the garage be built outside of the floodplain.

Board Members discussed the request and felt a compromise would be to approve two separate locations.

Motion by Pope, seconded by Golombeski, to approve the Special Exception request to build a 1,200 square foot garage, where 1,000 square foot maximum is permitted, in an R-1 Single-Family Residential District as shown, or directly outside of and up to the designated flood plain. Motion carried by the following vote: Aye – Ahlvin, Pope, Golombeski and Cremer; Nay – None.

Docket 49-18/Special Exception: Application of Susan and Thomas Becker, 246 E. 14th Street, to construct a 3' x 8' detached storage shed 0 feet from the south and west property lines, 3 feet minimum required, in a C-4 Downtown Commercial zoning district.

Susan Becker, 246 E. 14th Street, said they would like to construct a very small bike shed in the rear yard in an effort to securely store bikes and provide a little additional room in their house.

No one spoke in opposition.

Staff Member Hemenway said that the shed would be built along a privacy fence, would be very small in size, and will not impact visibility from adjacent properties to the alley.

Board Members discussed the request and felt it was appropriate.

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

ITEMS FROM STAFF: None.

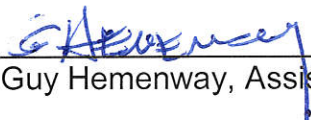
ITEMS FROM BOARD: None.

ITEMS FROM PUBLIC: None.

ADJOURNMENT: Motion by Ahlvin, seconded by Pope, to adjourn the November 15, 2018 Zoning Board of Adjustment meeting. Motion carried by the following vote: Aye – Ahlvin, Pope, Golombeski and Cremer; Nay – None.

The meeting adjourned at 6:35 p.m.

Respectfully submitted,



Guy Hemenway, Assistant Planner

12-20-18

Adopted