



Approved

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

5:00 p.m.

Thursday, January 24, 2019

City Council Chamber, Historic Federal Building

Board Members Present: Chairperson Jonathan McCoy, Board Members Keith Ahlvin, Jeff Cremer and Bethany Golombeski; Staff Members Guy Hemenway and Travis Schrobilgen.

Board Members Excused: Joyce Pope.

Board Members Unexcused: None.

CALL TO ORDER: The meeting was called to order by Chairperson McCoy at 5:02 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 December 20, 2018 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

DOCKET 50-18/Appeal: Appeal of Eric McSperrin for off-premise residential storage.

Attorney Scott J. Nelson, 3003 Asbury Road, Suite 1, said that he represents Mr. Eric McSperrin. He submitted a two-page letter outlining Mr. McSperrin's appeal regarding what he termed the alleged illegal residential storage at 479 Kaufmann Avenue.

Board Members reviewed the document.

Mr. Nelson addressed the Board, noting that garages are permitted in all residential districts. He said that there is nothing in the Unified Development Code (Code) that explicitly states that the use of the garage for someone who is not a resident of the property is not permitted. He cited Code language regarding residential use. He said that nowhere in the Code is non-occupant storage in a residential garage addressed. He said that the use of a garage, which is expressly permitted in an R-1 District, is incidental and subordinate to the main use of the property. He said that using a garage for storage complies with Section 3-7.1 of the Code and that the use is specifically authorized, is subordinate and is located on the same zoning lot with the principle structure. He further stated that the neither the definition section nor Section 3-7.1 of

the Code make any reference whatsoever to staff's contention that the accessory use of garage only pertains to occupants or residents of the property.

Mr. Nelson said that he felt that if this were the intent of the ordinance, it would clearly say so on its face. He said there is no evidence that the use of a garage by a non-resident would displace materials and that there was also no evidence that the garage in question was being used for anything other than a garage. He said there is no auto repair or commercial storage going on in the subject garage. He said the Code references the use of the garage and not the occupants of the property. He said that the use of the garage would be the same no matter who is making use of it – be it a resident of the property or Mr. McSperrin.

Mr. Nelson said that the language in the Code regarding storage on residential lots is ambiguous and that ambiguity must always, as a matter of law, be resolved against the maker. He stated that the UDS's intent to promote health, safety, sustainability and the general welfare of the community and to preserve places and areas for historical and cultural importance and significance is not affected by Mr. McSperrin's use of the garage. He further cited sections of the Code, noting that the garage does not impact congestion in the streets, cause a fire or other hazard, and does not limit adequate light and air, cause overcrowding of the land, or create an undue concentration of population. He said further that Mr. McSperrin's use of the garage does not affect transportation, water/sewage, schools and parks, or sustainable design and development.

Mr. Nelson said the question is how is the lawful use of a garage by a resident somehow different from the identical use of the same garage by a non-resident. He said the answer is clearly that it does not. He said the only way to reach staff's conclusion is to ignore the clear language and intent of the Code and read into it something which is not there – the differentiation between a resident and non-resident use. He said that staff's recommendation contained in the memorandum clearly falls outside of the clear language of the Code, and is an improper interpretation that does not conform with the UDC or with simple logic, and thus is wholly improper. He said that Mr. McSperrin's use of the garage is a perfectly legal and appropriate use under the UDC, and that the Board should vacate the September 6, 2018 Notice of Violation issued to Mr. McSperrin.

Staff Member Hemenway rebutted, stating that the Code defines accessory use as a use that is incidental, related, appropriate and clearly subordinate to the main use of the lot or building. He stressed that accessory uses must be related to the residential use of the lot. He said that accessory uses should not alter the principal use of the subject lot or affect properties in the district. He said that if a garage is used by a non-resident then there is no connection between the accessory structure and the residential use on the property. He stated that using a garage for commercial storage is not listed as a permitted use in any one of the residential districts. He said it is highly unlikely that someone would offer valuable garage space on a residential lot to a non-resident

without reimbursement. He said that the use of a garage by a non-resident constitutes commercial storage. He said that the Code language simply means that on a residential lot, all storage of vehicles and other materials must be accessory to the residential use of the lot and only to be used by occupants of the residence. He said this limitation is placed on residential lots and is intended to protect and preserve the residential use and character of the neighborhood.

Staff member Hemenway said that accessory structures are allowed on residential lots to supplement and enhance the principle structure and the residential use of the property. He said generally, accessory structures allow for additional storage for those vehicles and materials typically associated with residential properties, such as lawnmowers, bicycles, barbeque grills, sports equipment, ladders, tools, gasoline engines, propane and vehicles that may not be appropriate inside houses or materials such as ladders and canoes that may not fit within a house. He said that garages also serve to satisfy the required off-street parking for a residential unit. He said that the Board's charge is to determine whether the staff's interpretation of the Code language is accurate and true to the intent of the Ordinance.

Board Members Cremer noted that this had been the first opportunity for the Board to hear an appeal. He asked for staff to clarify the appeal process. Staff Member Hemenway noted that any challenge to the Board's decision on the appeal would have to be heard in District Court.

Chairperson McCoy asked staff if there were any clear criteria for the Board to follow regarding an appeal. Staff Member Hemenway said that it is the Board's responsibility is to determine if staff's interpretation of the Code language is true to the intent of the Ordinance and that there are no set criteria that would apply to that determination.

Mr. Nelson rebutted, stating that staff's contentions are pure speculation regarding what kind of commercial uses may occur in the garage. He questioned what difference it makes who is using the garage. He said that if the appellant was using the garage for commercial activity, such as auto repair, that would be clearly illegal under the Code. He said; however, that is not what is occurring in the subject garage. He said that all ambiguity in the Code is construed against the author of the Code. He said that those who drafted the Code must explicitly indicate that storage on a residential lot for a non-resident is not allowed.

Board Member Ahlvin asked if the garage is rented. Mr. Nelson said that it was rented. Board Members asked if this was a paid transaction or a commercial transaction. Mr. Nelson said that it was simply a transaction. Mr. Nelson said that there is nothing in the Code that explicitly bolsters staff's contention that a residential garage cannot be rented to someone who does not live on the property.

Staff Member Hemenway rebutting, noting that Mr. Nelson stated that the current residents of the property are not using the garage. Staff member Hemenway said that is

because the garage is not available to them. He said that as there are thousands of parcels, dozens of zoning districts, and hundreds of uses throughout the community, and that the Code cannot explicitly address every situation. He said; therefore, the Board's charge is to determine if staff's interpretation of the Code language is accurate and true to the intent of the Ordinance. He said that the intent is very important, because while there may be gray area in some parts of the Zoning Ordinance, the intent here is, in his opinion, very clear.

He said the property in question is located in a residential zone and he noted that the Board's ultimate interpretation would apply to all residential districts within the city. He noted that the root word in the term "residential" is resident. He said that, in other words, residential districts are intended to provide areas within the community that are reserved for the people who live there. The intent, he said, is to limit non-residential activity, which he said could include commercial activity, such as storage, auto repair, or any other number of uses. He noted that the Code Enforcement Officer is very busy regulating this type of illegal activity in residential districts. He said that this kind of activity can lead to the accumulation of materials, many of which are not typically found on residential lots. He said that non-residential use of a garage can lead to excessive noise, odors, and hours of operation that can have a negative effect on the neighborhood and lead to blight.

He said there are many permitted accessory uses allowed on a residential lot. He referenced a backyard barbeque that may be held by a resident, noting that just because a backyard barbeque is permitted, a retail restaurant would not be permitted. He said the intent of the Ordinance is that residential accessory structures be used by the residents of the house located on the property. He recommended the Board affirm the interpretation that storage of vehicles and materials on a residential lot for other than residents on the premises constitutes illegal commercial activity and is not permitted in residential districts.

Board Members discussed the request. Board Member Ahlvin said that he does not see commercial storage listed as a permitted or conditional use in any of the city's residential districts.

Board Member Cremer said that he felt that the use of a residential garage other than by the residents on the property does not promote health, safety, and general welfare in a residential neighborhood. He said therefore he is inclined to affirm staff's interpretation.

Board Member Golombeski referenced the preamble to the Single-Family Residential District, noting that it is the most restrictive residential district and is intended to protect low density residential areas from the encroachment of incompatible uses. She said that the principle use of the land in this district is for low density single-family dwellings, noting that a commercial garage would not meet the intent of the single-family district.

Chairperson McCoy said that the use of the garage was clearly a commercial use.

Motion by McCoy, seconded by Golombeski, to affirm staff's interpretation that storage of vehicles and materials in a residential lot for other than residents on the premises constitutes illegal commercial storage, and is not permitted in a residential district. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

ITEMS FROM STAFF: None.

ITEMS FROM BOARD: None.

ITEMS FROM PUBLIC: Mr. Nelson further debated the Board's decision and staff interpretation regarding storage in a residential garage. He said that there are many activities such as a swimming pool party where those throughout the neighborhood are utilizing a residential property but are not residents of said property.

Mr. McSperrin said that he disagreed with the Board's interpretation and said there is nothing in the Ordinance that says he cannot store in a residential garage.

Chairperson McCoy said that he understood Mr. McSperrin's concerns, but the case had been heard and decided on.


ADJOURNMENT: Motion by McCoy, seconded by Golombeski, to adjourn the January 25, 2019 Zoning Board of Adjustment meeting. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

The meeting adjourned at 5:50 p.m.

Respectfully submitted,



Kyle L. Kritz, Associate Planner



Adopted