



Approved

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

5:00 p.m.

Thursday, May 2, 2019

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 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: Motion by Cremer, seconded by Ahlvin, to approve the minutes of the March 28, 2019 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Ahlvin, Golombeski and McCoy; Nay – None; Abstain - Cremer.

Docket: 07-19/Sign Variance (Reconsideration): Application of Core Investments Group, Inc / Jamie McDonald, 40 Main Street, to install one, 31.2 sq. ft. wall-mounted sign, 16 sq. ft. maximum permitted, in an OC Office Commercial zoning district.

Jamie McDonald, 40 Main Street, said that a 16-square foot sign would be difficult for passersby to see. He asked to be granted the same size sign as another business in the building. He said that they designed a sign to fit the character and scale of the building.

Staff Member Hemenway presented the staff report. He noted the size of the sign and the approval of a former sign variance request for the same building. He discussed the OC Office Commercial sign regulations and the location of other OC properties in the community. He noted the large scale of the building and the distance of the building wall from the adjoining streets. He said that the sign will be individually cut letters affixed to the brick wall. He said that the building is located in a commercialized area. He said the

Chairperson McCoy asked about runoff from the garage's roof. Staff Member Wernimont said that it would fall into the yard or the alley.

Board Members discussed the request and felt that the storm water should be sequestered on the subject property.

Motion by Cremer, seconded by Golombeski, to approve the Special Exception with the condition that storm water be directed onto the subject lot not onto the alley or adjacent properties. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

Docket 11-19/Special Exception: Application of Stephen Graham to construct a 480square foot detached garage at 2520 Elm Street for a total of 1,200 sq. ft. of accessory structures, 1,000 sq. ft. maximum permitted, in an R-2 Two-Family Residential zoning district.

Stephen Graham, 2523 Pinard Street, said that he would like to improve his property and add a 24' by 20' detached garage to give him additional storage space.

No one spoke in opposition.

Staff Member Hemenway presented the staff report. He said the proposed detached garage, when coupled with an existing detached garage and storage building, would total 1,200 square feet of detached accessory structures on the property, when 1,000 square foot maximum is permitted. He described the location of the garage, noting that it would take access from Elm Street, but that the subject house and adjacent houses front on Pinard Street. He said that, if approved, the detached garage could not be used for commercial storage purposes.

Board Members discussed the request and felt it was appropriate.

Motion by Golombeski, seconded by McCoy, to approve the Special Exception request for 2520 Elm Street as submitted. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

Docket 12-19/Special Exception: Application of Cory McClain, 2662 University Ave., to build a 14' by 50' detached garage 2' from the east side property line, 6' minimum required, in an R-1 Single-Family Residential zoning district.

Corey McClain, 2662 University Ave., said that he would like to build a 14' by 50' garage to replace a deteriorating garage next to his neighbor's garage. He said he cannot place the garage on the other side of the property because an addition blocks his access.

Motion by Ahlvin, seconded by Golombeski, to approve the Special Exception request with the condition that the fence be neighbor-friendly with the finished side facing the street and neighboring property. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

Docket 15-19/Special Exception: Application of George Nauman, 2050 Deborah Dr., to build a 12' x 30' detached carport 6' from the front property line, 20' minimum required, in an R-1 Single-Family Residential zoning district.

George Nauman, 2050 Deborah Drive, said he would like to extend his carport 10 feet from the sidewalk. He said it will be a wooden frame structure with metal roof and open design.

Staff Member Wernimont explained the request, distributing an aerial photo and street view of the site. He said the former attached garage had been enclosed and made into an addition. He said that as the proposed carport will be of an open design it should not pose any sight visibility issues. He said that it will be approximately 10-11 feet back from the sidewalk. He said that if the Board was prone to approve, he recommends the carport remain an open design.

Chairperson McCoy asked about potential issues with snow removal. Staff Member Wernimont said as the carport will be approximately 10 feet from the sidewalk, it should not pose any snow removal issues.

Board Member Golombeski asked why the carport needed to be 30 feet deep. Mr. Nauman said that he would like to stack two vehicles in the carport.

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

Board Member Ahlvin referenced criteria B and E established in the Unified Development Code regarding the structure's potential impact on neighboring properties and conformance with existing district standards as reasons for his denial.

DOCKET 18-19/Special Exception: Application of Paul Paxton, 1451 Mt. Pleasant, to build a 14' by 22' detached garage 16" from the south side property line, 6' minimum required, in an R-1 Single Family Residential zoning district.

Paul Paxton, 1451 Mt. Pleasant, said that he would like to build a 14' by 22' garage accessed from the newly created green alley. He said that the existing garage is 14' by 10', but it is deteriorating, and would like to remove it.

Board Members discussed the request and felt it was appropriate provided that the porch remain open.

Motion by Golombeski, seconded by Ahlvin, to approve the Special Exception request with the condition that the porch remain of an open design. Motion carried by the following vote: Aye – Cremer, Ahlvin, Golombeski and McCoy; Nay – None.

Docket 09-19/Variance: Application of James Steiner/University of Dubuque, 2180 Grace St., to install a 293-sq. ft. University of Dubuque sign, 100 square foot maximum allowed, in an ID Institutional District.

James Steiner, Vice President of Finance, University of Dubuque, 2000 University Avenue, explained the University's South Commons project. He said that the university is currently allowed a 100-square foot sign. He said that the sign will be placed atop a limestone retaining wall and that it will advertise the 1.5-acre commons area. No one spoke in opposition to the request.

Staff Member Hemenway noted the University of Dubuque would like to install a 293-square foot sign. He described the proximity to the adjacent streets and discussed surrounding land use, stating that the sign would be located at the center of the university's campus. He noted that the applicant had submitted a rendering showing a difference between a 100-square foot and a 300-square foot sign.

Board Members discussed the sign size, material, and location. Chairperson McCoy asked about the sign's intent. Mr. Steiner said that the sign will be visible from the south to the campus, which he said is the intent.

Board Members discussed the request, and felt that the sign would be appropriate given some conditions.

Motion by McCoy, seconded by Cremer, to approve the Sign Variance request with the conditions that:

- 1) The sign be built in accordance with the submitted rendering; and
- 2) No other large freestanding signs face the southern end of the campus.

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

Docket 10-19/Conditional Use Permit: Application of Shenith Leatherwood, 1993 Asbury Rd., to open a child care center with 27 children and 5 employees.

Staff Member Hemenway described the previous conditional use cases for the subject property. He referred to the renderings submitted by the applicant, noting the location of the screening fence, site signage and landscaping. He said the new cooler is smaller in size than what was formerly approved; however, it is located on the south side of the building instead of the west side of the building, closer to the adjacent residential properties. He said that the renderings submitted show no landscape screening around the south side of the cooler where it is closest to the adjacent property. He recommended that the existing signage on the west side of the building be removed, that the dumpster be enclosed, and that a screening fence be placed along the parking lot on the west side of the property to reduce the impact of vehicle noise and headlights. He recommended that more landscaping and screening be placed between the proposed cooler addition and the adjacent residential property. He said that the existing concrete pad will not likely accommodate a heavy structure such as a cooler.

The Board discussed the location and height of the cooler with respect to the adjacent grades. Board Member Ahlvin asked Mr. Hiatt why the applicant did not place the cooler on the west side of the building as was originally approved. Mr. Hiatt said that placing the cooler on the west side was no longer an option. He said that the applicant is willing to comply with all building regulations regarding the concrete slab and footings.

Chairperson McCoy asked about the fence installation. He said that he would like a fence on the south side of the lot in addition to the proposed landscaping. He recommended that the compressor be located away from the neighboring residential properties at the northwest part of the building.

Board Member Golombeski discussed potentially cladding the cooler's exterior with a material that would hide the hammered aluminum surface.

Board Members discussed the landscape plan that had been submitted to the City. Board Member Ahlvin said expressed concern with reducing the buffer area between the residential development and the gas station, which he said would move the commercial building closer to the neighboring residential properties.

Board Members discussed the privacy fence and compressor locations. The Board asked to have the compressor located atop the other cooler on the west side of the building and partially screened to help direct noise up and away from the neighboring properties. Board Members felt a building permit should be applied for immediately, possibly within 60 days.

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

9) That the dumpster shall be fully enclosed as per City of Dubuque standards.

Motion carried by the following vote: Aye – Cremer, Golombeski, and McCoy; Nay – Ahlvin

Board Member Ahlvin stated concerns with reducing the buffer area between the commercial structure and the adjacent residential properties.

Board Member Pope entered the meeting at 6:55 p.m.

Docket 16-19/Appeal: Application of David Stuart to appeal the Zoning Enforcement Officer's Notice requiring removal of all items of personal property "stored" within the dwelling as storage for property located at 1589 Bluff Street.

Chairperson McCoy described the appeal procedure.

Stuart Hoover stated he is the attorney representing David Stuart and Jade Engineering, LLC. He said that the City had sued Jade Engineering and lost for the very same issues the Board is reviewing this evening. He distributed two previous cases heard at the Iowa District Court and the Iowa Court of Appeals. He said that the cases are germane because the very same issue was reviewed and the court(s) found in favor of Mr. Stuart.

David Stuart, 1470 Locust Street, said that he is a member/manager of Jade Engineering, LLC, and that he has authority to make decisions for the company. He said that the City has ordered him to remove all of his personal property from the building at 1589 Bluff Street. He discussed the International Building Code definitions of buildings. He said that the subject building was originally designed as an owneroccupied single-family dwelling. He said it is currently a dwelling. He said that the dwelling has a kitchen, bathroom, and is located in a high density, multi-family residential zoning district. He said that the property was slated for demolition by the previous building owner, but he purchased the building intending to rehabilitate to save it from destruction.

Mr. Stuart said that the Unified Development Code (UDC) defines storage, and he read said definition. He said that the UDC is silent on what personal property may be stored in a dwelling. He said the UDC only regulates vehicle storage on residential lots. He said people keep many things within their property and that keeping things on the property is considered storage. He said that in the past storage his father had stored airplane parts in the back yard of his property. He said that he has thousands of hours of carrier flight line experience and keeps much aviation memorabilia in his home. He said that the Zoning Officer's Notice of Violation requires all personal property be

Mr. Stuart said that the UDC does not say what he can use inside the building. He said that there is personal property currently in the building. He said his storage is not an accessory use and that the principal permitted use is a dwelling. He said that he has some air conditioners and roofing materials in the building that he said can be normally found in any building that is being rehabilitated.

Chairperson McCoy asked if the roofing material is for the subject building at 1589 Bluff Street. Mr. Stuart said the material is for the building but may be used on other properties.

Mr. Stuart said that his property does not have an accessory structure. He said that he is permitted to place materials within the buildings and that there are currently trim and roofing materials inside. He said he the City is trying to compel him to remove all the materials from the building. He said that keeping personal property in a residential structure is not an accessory use. He said that the UDC does not limit the activities that can occur within or what he can do with his dwelling.

Staff Member Hemenway said that Mr. Stuart has made it clear that the building is being used as a storage building. He said a building permit for this property has not been obtained since 2006. He said that the Board should uphold staff's interpretation that the building is being used for storage and is absent a principal residential use.

Staff Member Hemenway noted that staff has been asked to make interpretations regarding what materials can be stored inside of a residence. He said that the Zoning Enforcement Officer was called to a residence where lawn mowers were being stored. He said that lawn mowers are considered customary and subordinate to a residential use; however, the officer discovered there were 18 lawn mowers on the premises. He said that staff, at that time, determined that this was not customary, incidental or subordinate to the principal use which was residential, and there was clearly a business being undertaken there. He said that staff is often called upon to determine whether stored materials are typically accessory to a residential use.

Staff Member Hemenway recommended that the Board affirm Planning staff's interpretation that storage of construction materials, old furniture, antiques, and other miscellaneous materials not accessory to a residential use, is not permitted in residential districts, including the property at 1589 Bluff Street, and is a violation of Section 16-5-6.1 of the Unified Development Code.

Board Member Ahlvin discussed the materials that were stored in the building. He said that it is a bit of an overreach to require someone to remove all their personal property. He said that if the personal property were to be removed, the building would still be the same.

Mr. Hoover stated that Mr. Stuart had been addressing the issues regarding maintenance and renovation of the buildings. He said that the City has been harassing his client regarding his buildings and properties. He said this building is being used residentially as it is designed and used. He said that the UDC does not require that one must live in a building for it qualify as a residence. He said the property is used for human occupation. He said that Dave Stuart would like to save these buildings. He said they are being used for their intent. Mr. Hoover said that if it was up to him, he would have bulldozed the buildings long ago, but he said the material within the buildings is to be used for upkeep, maintenance and renovation of the buildings.

Dave Stuart said that he disagrees with staff's contention that the building is not occupied. He said that occupation can take several forms, and that the term vacant means that it does not have materials in it. He said unoccupied means that there is no one in the building. He said that Jade Engineering, LLC is buying properties and working to rehabilitate them. He said that there are no accessory uses within the building. He said that the personal property does not need to be related to anything detailed in the UDC. He said that no one is currently sleeping in the building. He said that he and others own 10 properties within a seven-block area with a total of 50 units. He said that he does not need to live in the building for it to be occupied. He said it is undisputed that he is rehabilitating the property.

Mr. Stuart said that every time the City fights him he has to stop his rehabilitation projects. He said that he puts items in the building that are useful for his business.

Staff Member Hemenway said that it is not the City's intention to harass any citizens, but to see that all codes are complied with in an effort to maintain neighborhood integrity, character, safety and sanitation. He said that the property has been designed as a residence but is being used as a storage building. He said that the intent of the ordinance is to permit a residence and not a de facto storage building. He said the building is being used for storage. He noted that the building has not had a building permit active since 2006.

Mr. Stuart said the UDC allows principal permitted uses with conditions. He said there are no accessory uses on the property. He said that it is not being used for storage; he said that everything in the building is being kept until it is needed. He said the building cannot be considered vacant because it has things in it. He said the UDC does not tell a property owner what he can store on his property.

Staff Member Hemenway explained he was addressing the accusation of harassment raised by the appellant and his attorney. He said that the building is being used primarily to store goods and materials.

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

The meeting adjourned at 8:50 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. L. Kritz', is written over the printed name.

Kyle L. Kritz, Associate Planner

5.27.19

Adopted