

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

5:00 p.m.

Thursday, October 22, 2020

Virtual Meeting

Due to the COVID-19 pandemic and mandates for social distancing, this meeting was conducted virtually.

**Board Members Present:** Chairperson Jonathan McCoy, Board Members Keith Ahlvin, Gwen Kosel and Matt Mauss.

**Board Members Excused:** Bethany Golombeski

**Board Members Unexcused:** none

**Staff Members Present:** Wally Wernimont, Travis Schrobilgen and Jason Duba

**CALL TO ORDER:** The meeting was called to order by Chairperson McCoy at 5:02 p.m.

**MINUTES:** Motion by Ahlvin, seconded by Kosel, to approve the minutes of the September 24, 2020 Zoning Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 52-20:** Application of David and Bambi Roth, 2782 Van Buren St. to permit a 7' high fence along the front property line (Isborn Avenue), where 4' maximum is allowed, in an R-1 Single-Family Residential zoning district.

David Roth, 2782 Van Buren Street, spoke in favor of the request. Roth explained that they bought the house in 1996 and the fence was there. He added a one-foot topper to prevent his dog from jumping over. The fence is 20' from the street.

Staff Member Duba detailed the staff report noting that based on historic aerial imagery, the fence was in place before the Roths purchased the home. He explained the fence is 20' from the street, and even if Isborn Avenue were improved, there would be at least a 5' buffer between the parkway and the fence. The 7' high fence should not obstruct visibility. The neighbors across the street at 1365 Isborn support this special exception.

The Board noted that the fence has been there for 25 years and has neighbor support.

Motion by Ahlvin, seconded by Kosel, to approve the request to permit a 7' high fence along the front property line (Isborn Avenue), where 4' maximum is allowed, in an R-1 Single-Family Residential zoning district. Motion carried by the following vote: Aye –

Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 53-20:** Application of Robert Wright, 2527 Broadway St. to construct a residence 280' from the front property line, where 50' maximum is allowed, in an R-1 Single-Family Residential zoning district.

Robert Wright, 2721 Elm St, owner of 2527 Broadway, spoke in favor of the request. Wright explained that he wants to build in a private setting, other houses in the area are built back that far, and he wants to enjoy the view.

Staff Member Schrobilgen detailed the staff report noting that it has split zoning – R-2 for first 135 feet, then R-1 the rest of the way, so the dwelling would be in R-1. It has legally non-conforming lot frontage at approximately 40'. The residence will be situated behind adjacent properties potentially reducing privacy, but this neighborhood does have a couple of examples of residences to the rear of other properties, and this would be well over 100' from the nearest residence, and there is room for screening of some sort. He also noted that the water, engineering, and fire department had reviewed the proposal and have each noted that they did not have any concerns regarding service.

The Board asked clarifying questions about the proposed location of the dwelling, keeping runoff from impervious area on the property, privacy, removal of trees, and whether neighbors were notified. Mr. Schrobilgen confirmed that neighbors were notified, and one letter was submitted saying it wouldn't affect their property but could affect the neighbor's.

Motion by Ahlvin, seconded by Mauss, to approve the request to construct a residence 280' from the front property line, where 50' maximum is allowed, in an R-1 Single-Family Residential zoning district with the condition that stormwater runoff from improvements on the property be maintained on the property. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 54-20:** Application of Timothy Mueller, 2901 Hillcrest Rd. to box-in around an existing freestanding solar array in an R-1 Single-Family Residential zoning district.

Timothy Mueller, 2901 Hillcrest Road, spoke in favor of the request. Mueller explained that he constructed the solar array 3 ½ years ago and that maintaining the area under the array is difficult because it's on a slope. He considered other options and decided to form a floor to store things. Then he decided to frame it and put the power inverter inside to improve the appearance and functionality of the solar array.

Todd Locher, 202 2<sup>nd</sup> Ave NW, Farley, Iowa, stated he is representing Robert Renne, 1950 Avalon Road whose property is 60' south of Mueller property. Locher explained that Mueller built the frame without any permission, and that it is technically a building which needs to be subject to a permit, building codes, and an inspection. Mueller's claim that he didn't know this required a permit is disingenuous, as he's dealt with such matters before.

Mueller explained that the project evolved over time, it has been inspected by an electrician, and it hasn't changed the footprint. Planning Services Manager Wernimont explained that the board needs to consider this request as if the enclosure isn't there, and if it is approved, the Building Department will need to inspect the structure for compliance with building codes.

Staff Member Schrobilgen detailed the staff report noting this request is not an increase of square footage of detached accessory structures but is a slight change in use from what was approved by the Board previously. This is also a separate request from the initial approval in 2016, and a denial would not remove the solar array, but would require the removal of the walls that enclose its base. He also noted that the solar array has been in place for about 3 years and enclosing it, given its location, will not block the views to the sidewalk and street from adjoining properties and should have little impact on the use, value and enjoyment of adjacent properties. Additionally, and for the same reasons, it should have little impact on public health, safety, comfort or general welfare.

The Board discussed whether the building code would allow something like this, the nature of an accessory structure, and limiting it to storage uses.

Motion by Ahlvin, seconded by Mauss, to approve the request to box-in around an existing freestanding solar array in an R-1 Single-Family Residential zoning district with the condition that it only be used to contain the inverter from the solar array and for personal non-commercial storage. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 55-20:** Application of Deb McDonnell and Barb Weber, 3392 Hillcrest Rd. to permit residences occupying the first floor and basement, where residential use above the first floor only is permitted, in a C-3 General Commercial District.

Deb McDonnell, requested to table her application due to only four members being present.

Motion by McCoy, seconded by Mauss, to accept the request to table the application until next month. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 56-20:** Application of Jeffrey Morton, Architect, 801 Rhomberg Ave. to permit a carry-out restaurant as a conditional use in a C-2 Neighborhood Shopping Center zoning district.

Jeffrey Morton, 206 Bluff St, representing the current owner and future owner, Kevin Scharpf, spoke in favor of the request. Morton explained that the request is for a carryout restaurant which is listed as a conditional use in an C-2 zoning district. He explained that the property is currently zoned C-1 and they have applied to the Zoning Advisory Commission for rezoning from C-1 to C-2. He explained that the structure was

originally built as a service station and they are planning significant investment into the property. He said the restaurant will be a benefit to the neighborhood and is similar to the restaurant across the street and to Cremer's grocery store.

Jeff Cremer, 830 S Grandview, owner of property for 17 years, supports this project because it could make it a living building again and become a bright star for the neighborhood.

Staff Member Wernimont detailed the staff report, noting that Morton and Cremer had explained the request well. He emphasized that, if approved, the Board should make it contingent on rezoning from C-1 to C-2. He explained, as with all restaurants, the Building, Health and Fire Departments must review and approve any plans to convert the building to a restaurant to ensure all health, building and fire safety codes are met prior to issuance of an occupancy permit.

The Board asked about potential hours of operation, drive-thru service, and screening for neighboring properties to the rear and side. Morton said he wasn't sure about the hours or screening but knew that a drive-thru was not planned. Scharpf was busy and could not attend the meeting, so the Board decided to include some conditions that could be negotiated at the next meeting if they are not found to be acceptable.

Motion by Ahlvin, seconded by Kosel, to approve the request to permit a carry-out restaurant as a conditional use in a C-2 Neighborhood Shopping Center zoning district with the condition that the restaurant close at 10:00 PM, there be no drive-thru service, that the parking area be screened to shield vehicle lights shining into adjacent residential properties, and that it be contingent on rezoning from C-1 to C-2. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 57-20:** Application of Bill Stierman, 2757 University Ave. to construct an attached front porch 8' from the front property line, where 20' minimum is required, in an R-2 Two-Family Residential zoning district.

Bill Stierman, 2757 University, spoke in favor of the request. Stierman explained that he plans to put in platform, stairs, and rails to gain access to the front door where there is no access currently. He took down the old front porch that was enclosed because it was dilapidated.

Staff member Schrobilgen detailed the staff report noting the proposed porch would be approximately 6' above and 20' from the edge of pavement of University Avenue, that the curve of the road as well as the porch being above the right of way helps to maintain the view for vehicles travelling along University Avenue and should not block the view to vehicles backing out of their driveways. He noted that one letter was received from the neighbor at 2749 University neither supporting nor opposing the project but they noted that the porch should remain of an open design. Staff recommended that if approved, the porch remain of an open design.

The Board did not have concerns and concurred with the recommendation that it remain an open design.

Motion by Mauss, seconded by Ahlvin, to approve the request to construct an attached front porch 8' from the front property line, where 20' minimum is required, in an R-2 Two-Family Residential zoning district with the condition that it remain of an open design. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

**DOCKET – 58-20:** Application of Milk House, Inc./Allison Fuller, 620 S. Grandview Ave. to permit an indoor restaurant as a conditional use in a C-1 Neighborhood Commercial zoning district.

Allison Fuller, 1145 S Grandview, owner of the Milk House, spoke in favor of the request. Fuller explained that they opened the restaurant last September after East Mill Bakery was failing. They wanted a successful neighborhood gathering place. She explained that COVID posed challenges with her business and with the first floor being quite small, they wanted outdoor space and to expand upstairs. She said the top floor was a rental and they would like to expand into that space. She said they will have reduced hours for fall and winter. He said, If this isn't approved, it's unlikely they would make it through the winter.

Matt Preston, attorney, 2735 1<sup>st</sup> Ave SE, Cedar Rapids, representing Don and Patricia Trumm, who are directly across Bryant Street, presented a petition with 34 individuals opposed. Preston addressed numerous points in the City code related to this case. These can be summarized by the following:

- The property is already operating as an carryout restaurant without the conditional use permit.
- They are providing outdoor seating, which is not allowed in the C-1 district.
- They haven't provided evidence of their alcohol sales and whether they are below the threshold that constitutes a bar.
- They have insufficient off-street parking based on standards of number of seats, number of employees, and square footage. Expanding the seating capacity would exacerbate this deficit.
- They store equipment such as the meat smoker outside.

He also made points related to noise and the smell of the meat smoker.

Don Trumm (360 Bryant Street), Helene Magee (611 S. Grandview), Cody Udelhofen (350 Bryant Street), Kathleen Schmitt (606 S. Grandview) and Joe Hill (7946 Coyote Court – owner of adjacent apartment buildings) spoke in opposition to the request, citing the following concerns:

- Insufficient parking
- Customers taking nearby parking including reserved parking for an apartment complex
- Noise, including early morning deliveries and loud customers

- Litter and an overflowing garbage dumpster
- Equipment left outside
- Fear of reduced property values
- Traffic issues at this choke point of streets
- Advertising and serving of alcohol, alcohol consumption
- Out of harmony with neighborhood

Rick Dickinson, 205 Hill St, spoke in favor of the request, as a patron of the Milk House. While he respects the concerns of property owners, he believes the Fullers are addressing those concerns and are to be applauded for maintaining a hospitality business during this difficult economy.

Tut Fuller, 1145 S Grandview, responded to the public input stating that it's great that people care about this neighborhood by expressing their views. He stated their (Fuller's) goal is to enrich the neighborhood and rebutted the concerns of the neighbors regarding parking, traffic, rowdy customers, property values, lighting, alcohol sales, garbage, and the smoker.

Staff Member Wernimont detailed the staff report noting the off-street parking lot located on the property and the on-street parking spaces. He explained the Bryant School parking lot across the street cannot be considered as parking for the business without a formal agreement with the school. Wernimont read the petition into the record and shared a map of the opposition petition signers. He mentioned some conditions the board could consider in order to mitigate the effects on the neighborhood including: limiting hours of operation, reduction in seating, and limiting the sale of alcohol.

The Board had questions and concerns regarding parking, the smoker, the current zoning district and its uses, and lack of some detail in the application. They expressed appreciation for the neighbors' concerns.

Mr. Fuller requested to table the application until next month, during which time they could respond to concerns and provide further information. The Board confirmed that they would retain all the public input received during this meeting and apply it for consideration at the next meeting.

Motion by McCoy, seconded by Mauss, to table the request to permit an indoor restaurant as a conditional use in a C-1 Neighborhood Commercial zoning district at the applicants' request. Motion carried by the following vote: Aye – Ahlvin, Kosel, Mauss and McCoy; Nay – None.

NOTE: Due to a technology issue, the virtual meeting ending abruptly. Staff was able to restart the meeting and the Commissioners, staff and the public were able to log back into the meeting.

Matt Preston and Kathleen Schmitt had additional questions with regards to the Docket

58-20. Planning Services Manager Wernimont noted since the case has been tabled, they should contact and follow up with their comments to staff tomorrow.

**ITEMS FROM PUBLIC:** None

**ITEMS FROM BOARD:** None.

**ITEMS FROM STAFF:** The Board discussed Planning Service's Manager Wernimont's memo regarding "Guidance on Public Hearing & Reconsideration Procedures." Wernimont acknowledged that it can be difficult to communicate when we're meeting virtually and are not face-to-face. The conversation focused on Board Members communicating to the public and applicant their thoughts or reasons for the way they will vote on a case. Staff noted that most confusion from the public stems from when there is a 2-2 vote because there is less than a full Board present. Approval is only granted with three affirmative votes. Staff recommended that either the Board Chair or Staff summarize the vote with a declarative statement.

The memo also outlined Article IX of the Zoning Board of Adjustment By-Laws regarding Reconsideration. Special attention was paid to Section 2 where a case may be reconsidered provided (d.) a motion is made by a Board member of the prevailing vote on the case in question, is seconded, and is carried by not less than three affirmative votes, and (e.) that said motion is made not later than the first regular meeting succeeding the meeting at which the case was acted upon. It was noted that one of the significant differences between Section 1 and Section 2 is that new evidence is not required to be submitted under Section 2.

**ADJOURNMENT:** Motion by Kosel, seconded by Ahlvin, to adjourn the October 22, 2020 Zoning Board of Adjustment meeting. Motion carried by the following vote: Aye – Ahlvin, Golombeski, Kosel, Mauss and McCoy; Nay – None

The meeting adjourned at 8:25 p.m.

Respectfully submitted,



Wally Wernimont, Planning Services Manager

11-19-2020

Adopted