



Approved

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

4:00 p.m., Thursday, September 24, 2009  
City Council Chamber, Historic Federal Building

**Board Members Present:** Chairperson Mike Ruden; Board Members Randy Klauer, Jeff Cremer and Bill Gibbs; Staff Members Guy Hemenway and Wally Wernimont.

**Board Members Excused:** Board Member Heath Hutchinson.

**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 Chairperson Ruden at 4:00 p.m.

**MINUTES:** Motion by Klauer, seconded by Gibbs to approve the minutes of the August 27, 2009 meeting. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay - None.

Chairperson Ruden noted that only four Board members were present and that approval of an applicant's requests requires 3 affirmative votes. He said that applicants can choose to have their request tabled until the next meeting.

**SPECIAL EXCEPTIONS**

**DOCKET 39-09:** Application of Michael Dohanich for a special exception for property located at 2283 White Street to build a 22 foot by 22 foot detached garage 1 foot from the rear property line and 1 foot from the south side property line, 6 feet and 3 feet respectively required, in an R-2A Alternate Two-Family Residential zoning district.

Michael Dohanich, 2283 White Street, said that he is requesting to enlarge the existing garage in order to store his collector car and motorcycle. He said that he wants to dismantle a portion of the existing garage and expand the structure to 22 foot by 22 foot.

Staff Member Wernimont reiterated the special exception request. He distributed photos of the site to the Board. He discussed the photos, site layout and proposed building project. He said that the applicant is requesting to expand the existing detached garage. He said that, because of the close proximity to the property lines, he recommends storm water runoff be directed away from the adjacent property. He said that the existing driveway is not paved. He recommended that the Board place

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conditions upon approval that requires the driveway to be paved and storm water to be directed away from the adjacent properties.

The Board discussed paving the driveway as it relates to sustainability. The applicant explained that he has two existing paved tire tracks that connect the garage to the street. Staff Member Hemenway said that the requirement is to pave the driveway to the outside dimensions of the vehicle. He explained the reason for this, noting that the area between the tracks is often not maintained and gravel placed in between the tracks washes into the street creating safety and accessibility issues.

Motion by Klauer, seconded by Gibbs, to approve the special exception request, with the condition that storm water be directed away from the adjacent property. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 40-09:** Application of Dave & Sharon Ehlinger for a special exception for property located at 3110 White Street to build a 6 foot by 22 foot front porch, 10 feet from the front property line, 20 feet minimum required, in an R-3 Moderate Density Multi Family Residential zoning district.

Dave Ehlinger, 3110 White Street, explained his request to the Board. He said that he is proposing to add onto an existing porch. He explained that the porch will be wider and longer than the existing porch.

Staff Member Hemenway distributed photos of the site to the Board. The Board studied the photos. No one spoke in opposition to the request.

Staff Member Hemenway presented the staff report. He explained that all of the adjacent properties are through lots with back yards that abut White Street. He explained that Mr. Ehlinger's property fronts White Street. He said that the porch will not block the view to the sidewalk and street from the adjacent properties.

Motion by Klauer, seconded by Gibbs, to approve the special exception request, as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 41-09:** Application of Larry Locher / City Housing Services Department for a special exception for property located at 1325 Washington Street to build a front porch 4 feet from the front property line, 10 feet required, and 2 feet from the south side property line, 3 feet required, on a legally non-conforming property located in a C-4 Downtown Commercial zoning district.

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Joleen Patterson, City Housing Department, explained the request to the Board. She said that they are proposing to match a front porch to the house, as what was approved for the adjacent neighbor. She noted that the porch will have a hip roof and will be of an open design.

No one spoke in opposition to the request.

Staff Member Wernimont reiterated the special exception request. He noted the legal, non-conforming status of the property. He discussed photos of the site and the former special exception approval for the adjacent property. He discussed the porch design and visibility to the sidewalk and street.

Motion by Klauer, seconded by Gibbs, to approve the special exception request, as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 42-09:** Application of Gail & Sidney Clark for a special exception for property located at 370 Kaufmann Avenue to permit a 30 foot by 16 foot storage building/carport 0 feet from the west side property line, 6 feet required, in an R-1 Single-Family Residential zoning district.

Sidney Clark, 370 Kaufmann Avenue, explained that he is requesting approval for a special exception for an existing carport and addition. He said that he is the third or fourth owner of the property since the addition was added to the structure.

Staff Member Hemenway distributed photos of the site to the Board.

Mr. Clark said that a building permit was issued for construction of the carport/storage building in 1994. He said that there was no final inspection of the building until 2009. Staff Member Hemenway explained the building permit process.

Assistant City Attorney, Tim O'Brien, explained that a permit gives the property owner the right to build a structure on the property providing it meets all applicable City codes. He explained that the burden is placed on the property owner to determine where the property line is located in respect to the structure. Staff Member O'Brien said that no matter what the Zoning Board of Adjustment decides, they cannot approve the portion of the building that extends over the property line.

Mr. Clark said that he has lived at the property for three years. He explained that the adjacent property has been bought and sold since they have lived there.

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Staff Member Hemenway explained that a survey has been obtained for the property line.

Fay Delmolino, 374 Kaufmann Avenue, explained that she is the adjacent property owner to the Clarks. She said that the addition blocks access to an area located between the Clark's house and her fence, which is not being maintained regularly. She explained that that side of the Clark's property cannot be maintained without the Clark's trespassing onto her property.

The Board asked Ms. Delmolino when she purchased her property. She explained that she purchased the property at 374 Kaufmann Avenue in 2005. The Board discussed the location of the storage building in respect to the property line. The Board reviewed aerial photos of the site

Sidney Clark said that when the neighbor installed the fence, it blocked access to the area. He said that he has to walk on the adjacent owner's property in order to access the site for maintenance and that she does not allow him on her lot.

Staff Member Hemenway explained the request to the Board. He said that the structure was built in 1994, and that a building permit was obtained to build the structure. He explained that it is the property owner's responsibility to locate their property lines prior to construction of buildings. He said the addition is located 16 feet away from the closest residence, and does not block the view to the sidewalk or street from the adjacent properties.

Board Member Gibbs asked about the design of the structure. Mr. Clark said that the structure is a carport with an attached storage shed.

Board Member Klauer discussed the possibility of installing a door to the area that is not accessible for maintenance purposes.

Chairperson Ruden asked Assistant City Attorney O'Brien whether the Board can approve a structure that was built to the property line. He asked how the building can be maintained if the structure is built to the property line. Staff Member O'Brien said that maintenance of a structure that is built to the property line is a complex issue that can only be decided in civil court.

The Board reviewed the criteria for granting a special exception. Chairperson Ruden discussed criteria number 5. The Board discussed whether the addition will have a negative impact on the property value of the adjacent property. The Board noted that the addition has been in place since 1994 and that the property has been bought and sold over that time period.

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Motion by Klauer, seconded by Cremer, to approve the special exception request. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 43-09:** Application of Gary & Patti Schilling for a special exception for property located at 530 Cooper Place to build a 10 foot by 26 foot attached deck 11 feet from the front property line, 20 feet required, in an R-3 Moderate Density Multi-Family Residential zoning district.

Gary Schilling, 530 Cooper Place, said that he would like to build a 10 foot by 26 foot deck on the front of his home. Mr. Schilling presented a photo of the property to the Board. He explained how the deck will be constructed.

Board Member Klauer asked if the deck will extend further than the concrete patio. Mr. Schilling said that the existing deck is approximately 6 feet by 9 feet. He explained that the deck will extend over the concrete. The Board discussed the location of the proposed deck.

Mr. Schilling said the deck will extend to the edge of the retaining wall. He explained that the deck will not block the views to the river from the adjacent properties. Chairperson Ruden asked what type of railing will be installed. Mr. Schilling said that the railing will be an open design.

John Schreiber, 550 Cooper Place, spoke in opposition to the request. He said that the proposed special exception, if approved, will diminish his property value. He referred to an e-mail that was submitted to the Board.

The Board noted that the existing deck at 530 Cooper Place is dilapidated and that replacing it with a new deck and should not have a negative impact on the property value.

Mr. Schreiber expressed concern with the size of the deck and how it may impact property values.

Dorothy Bastian, 2742 Pleasant View, said that she has lived at 530 Cooper Place. She said she felt that the installation of the deck will improve the property value.

Mr. Schilling said he was initially proposing a deck/carport design that would extend to the side property line. He said that the addition of the deck will add value to the property.

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Staff member Hemenway outlined the staff report. He referred to letters that were submitted to the Board from adjacent property owners that are opposed to the proposed deck. He referred to aerial photos of the site. He said that the location of the deck will not block the views to the sidewalk and street from the adjacent properties. He said that the deck will not have a roof or be enclosed. He recommended that the Board review the criteria for granting a special exception.

The Board reviewed the criteria for granting a special exception. Board Members said that they felt that the addition of the proposed deck will increase property values and meet the criteria necessary for granting a special exception.

Motion by Klauer, seconded by Gibbs, to approve the special exception request, as submitted. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 44-09:** Application of Martin McNamer for a special exception for property located at 1800 Manson Road to build a house 800 feet from the front property line, 50 feet maximum permitted, in an R-1 Single-Family Residential zoning district.

Marty McNamer, 1749 Creek Wood Drive, said that he is purchasing a 7-acre parcel. He said that he wants to restore a barn on the site and build a new single-family home. He explained that he will extend a driveway from Manson Road back to the house. He said that the majority of the site is located in the flood plain.

Staff Member Wernimont reiterated the special exception request. He referred to photos of the site that were presented to the Board. He noted the site layout, flood plain location, and house and barn locations. He explained that the lot may need to be subdivided prior to building a new home if the existing farm house is not demolished. He said that he spoke with the Fire Department regarding access to the proposed residence. He said that the Fire Department required that, if approved, a 20-foot wide access lane, with a turnaround, be installed and that the subject drive be addressed at the street.

Motion by Klauer, seconded by Gibbs, to approve the special exception request, with the following conditions that: 1) a 20-foot wide paved driveway access with turnaround be installed; and 2) the property be addressed at the street.

Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**DOCKET 45-09:** Application of Marty McNamer / North Cascade Road Developers for a special exception for property located at 1717/1723 Creek Wood Dr. to build a single-

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family home on two lots 110 feet from the front property line, 50 foot maximum permitted, in an R-2 Two-Family Residential zoning district.

Marty McNamer, 1749 Creek Wood Drive, said that he has sold two lots that total approximately 3 acres in the Timber Hyrst Subdivision. He said that the new owner would like to build a home approximately 80 feet back from the front property line. He explained that the single-family home will straddle the common lot line between the two lots.

Staff Member Wernimont outlined the staff report. He discussed an aerial photo detailing the flood plain, site contours and house location. He said that the Fire Department has reviewed the location and has recommended that the driveway be addressed at the street.

Motion by Klauer, seconded by Gibbs, to approve the special exception request with the condition that the house be addressed at the street. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs, and Ruden; Nay – None.

**DOCKET 46-09:** Application of Elizabeth Kies / Alexander Wiese for a special exception for property located at 3298 W. 32<sup>nd</sup> Street to erect a 6 foot high fence in the front yard (Kennedy Road), 4 feet high maximum permitted, in an R-1 Single-Family Residential zoning district.

Alexander Wiese and Elizabeth Kies, 3298 W. 32<sup>nd</sup> Street, explained that they would like to build a 6 foot high fence along Kennedy Road to provide for the safety of their dogs and kids and to help reduce road noise. They said that the fence will be a solid privacy fence.

Staff Member Hemenway outlined the staff report and distributed photos of the site to the Board.

Board Member Gibbs asked why they would like to install a 6 foot high fence instead of a 4 foot high fence. Mr. Wiese said a 6 foot high fence reduces noise more effectively because the height will be above ear level.

George and Rose Pfeiler, 3150 Kennedy Road, spoke in opposition to the request. They cited issues with the view to the street while backing vehicles out of their driveway. They said that they would not object to the fence if it is moved back 5 feet.

Mr. Wiese said that they are open to moving the fence further back from the property line.

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Board Member Klauer explained that he is opposed to a 6 foot high fence located that close to the property line. Board Members said that they felt that if the fence were to be moved five feet back from the property line along Kennedy Road it would not have a negative impact on sight visibility to the street from the adjacent property. The Board discussed the location of the fence.

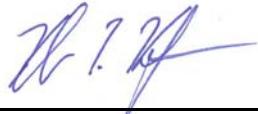
Motion by Klauer, seconded by Cremer, to approve the special exception, with the condition that the fence be located 15 feet west of southwest corner of the residence and run parallel to Kennedy Road. Motion carried by the following vote: Aye – Klauer, Cremer, Gibbs and Ruden; Nay – None.

**ITEMS FROM BOARD:**

Board Member Klauer asked about Docket 36-09, a conditional use permit for a child care center for the University of Dubuque. Staff Member Hemenway noted that he has reviewed a site plan and the timeframe for construction of the child care center.

**ADJOURNMENT:** The meeting adjourned at 6:07 p.m.

Respectfully submitted,



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Kyle L. Kritz, Associate Planner

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Adopted—October 22, 2009