



City of Dubuque, Iowa
Building Code Board of Appeals



**APPROVED MINUTES
REGULAR SESSION**

3:00 P.M.

Tuesday, July 16, 2019

City Council Chamber, Historic Federal Building

Commissioners Present: Benjamin Beard, Tom Swift, Derek Duehr, and Katrina Wilberding.

Commissioners Excused: None

Commissioners Unexcused: None

Staff Members Present: David Johnson and Jeff Zasada

CALL TO ORDER: Chairperson Beard called the meeting to order at 3:00 p.m.

CERTIFICATION OF COMPLIANCE WITH THE IOWA OPEN MEETING LAW: Staff presented an Affidavit of Compliance verifying the meeting was being held in compliance with the Iowa Open Meetings Law.

OATHS OF OFFICE: None

MINUTES: Board Member Wilberding noted a correction in the second to last paragraph on page one. Staff Member Johnson stated the minutes will be amended to reflect the Board put Mr. Hoover's representative on notice that this will be the last continuance granted. Motion by Wilberding, seconded by Duehr, to approve the minutes of the June 18, 2019 meeting as amended. Motion carried by the following vote: Aye – Swift, Duehr, Wilberding, and Beard; Nay – None.

APPEALS:

Vacant and/or Abandoned Building License – 409 Burch Street: Chairperson Beard reviewed the process for the appeal and noted the applicant will have 30 minutes to present their appeal.

Stuart Hoover, Attorney at Law, 820 Locust Street, stated he was there on behalf of the appellant John White. He stated he would like to ask Staff Member Zasada questions on the record. The Board requested Mr. Hoover direct all presentations and questions to them. Mr. Hoover stated it was his understanding he can call witnesses to be examined. The Board and Staff Member Johnson concurred there is opportunity for dialogue. Staff member Johnson noted the appeal is not a civil trial, it is an application being considered in a public meeting; however, Staff would answer questions.

Mr. Hoover stated Mr. John White has owned the building for many years. He noted Mr. White has been rehabbing the property. Mr. Hoover stated it is true the building is not used as a principal place of dwelling, but it is not abandoned. Mr. Hoover stated Mr. White is in the

building frequently and stores items in it. Mr. Hoover noted Mr. White has construction materials on the side of the house. Mr. Hoover stated because Mr. White does not sleep there, does not necessarily mean the building is not occupied. He noted the building is constantly being tended to. He stated Mr. White uses the building for legal purposes and permitted uses under zoning codes. Mr. Stuart stated there several legal uses for the property and water consumption is irrelevant to the discussion of occupancy.

Mr. Hoover requested to examine Mr. Zasada. Chairperson Beard requested questions be directed to the Board, and responses will be postponed until after Staff has had an opportunity to provide their Staff report. Chairperson Beard noted all questions will be considered by the Board. Mr. Hoover reviewed his questions. Mr. Hoover asked why 409 Burch Street was inspected; what are the definitions and requirements to qualify as a Vacant and/or Abandoned Building; what is the zoning and principal permitted uses for 409 Burch Street; how would Staff know the owner is engaged in legal activities; what legal activities can be done under the zoning ordinance; is living in a building a single-activity or a conglomeration of activities; what conditions there might be for the zoning district; is it required to use all possible activities in order for a home to be considered occupied or unoccupied; how many activities must on have in a home to be considered occupied; is Staff aware of the amount and use of personal property inside the home and what legal activities is Mr. White is doing. Mr. Hoover reiterated his opinion that he should be able to call Staff as witnesses to answer questions.

Chairperson Beard noted most questions are addressed in the staff report and called for the staff report. Staff Member Zasada reviewed the staff report. Staff Member Zasada stated the appellant is requesting the order to license 409 Burch Street as a Vacant and/or Abandoned building to be reversed. He stated the City of Dubuque Code of Ordinances defines a Vacant Building as any building or portion thereof which has been unoccupied for a continuous period over twelve (12) months and which meets one or more of the following criteria: it is A. Unsecured; B. Secured by means other than those used in the design of the building; C. Declared a "dangerous building" as defined in this section; D. Unfit for occupancy as determined by the City Manager; E. Noncompliant with the International Property Maintenance Code; F. Has Housing, Building, Fire, Health or Zoning Code violations; G. Open to vagrants, vandals, children or the unwary; or H. Not consuming or using one or more utilities provided by any one or more of the public utilities. He noted for the purposes of city code, public utilities are defined as water, natural gas, and electricity.

Staff Member Zasada reviewed the City of Dubuque Code of Ordinances definition of an Abandoned Building. He stated an abandoned building is as any building or portion thereof which has stood with an incomplete exterior shell for six (6) months or longer which meets one or more of the following criteria: it is A. is unsecured; B. is unoccupied; or C. is in violation of the International Property Maintenance Code, International Building Code, International Residential Code, or International Fire Code adopted by the City of Dubuque.

Staff Member Zasada stated On April 4, 2019 Building Services Staff completed a review of the property located at 409 Burch Street. At that time, City Staff found evidence that the building qualifies as a Vacant and/or Abandoned Building. Staff Member Zasada reviewed the following findings: The building has been continuously unoccupied for 12 months or more. Staff Member Zasada stated water records indicate water has not been consumed at the property for over 12 months. He elaborated water records show water has not been consumed at the

property since 2007. The water was shut-off at the stop box on 6/5/2018. Staff Member Zasada explained in accordance with IPMC 501.2 it is unlawful for anyone to occupy any structure or premises where kitchen sinks, lavatories, laundry facilities, bathtubs and showers are not supplied with hot or tempered and cold running water in accordance with the International Plumbing Code. In addition, P2901.1 of the 2015 International Residential Code requires potable water be supplied to plumbing fixtures and plumbing appliances. Staff Member Zasada also noted the building is in violation of the International Property Maintenance Code. He stated the building is in violation of the 2015 IPMC 304.2 noting exterior wood surfaces exhibit missing, peeling, flaking and chipped paint. Staff Member Zasada explained the building also has Housing, Building, Fire, Health or Zoning Code violations noting the appellant was found in violation of 16-12-3 of the City of Dubuque Code of Ordinances and there is a current court order and the property is still currently noncompliant with zoning code. Staff Member Zasada reiterated the building has not consumed or used one or more utilities provided by any one or more of the public utilities.

Staff Member Zasada stated Building Services Staff finds the evidence shows 409 Burch Street qualifies as a Vacant and/or Abandoned building under City Code and recommends the Board uphold the decision of the Building Official. Staff Member Zasada reviewed the prevue of the Building Code Board of Appeals for appeals noting the Board cannot waive code requirements, but they may reverse or modify a decision of the building official only on finding that the building official had incorrectly interpreted the provision of this Code; or the decision of the building official creates an unnecessary hardship upon the appellant.

In response to Mr. Hoover's additional questions, Staff Member Zasada explained the potential vacancy was brought to his attention after review of water records. He noted he was provided a report from the water department of all properties that have not consumed water in excess of 12 months, and he conducted further investigation. Chairperson Beard asked what the cost was for a Vacant and/or Abandoned Building License. Staff Member Zasada stated the annual fee is \$350. Staff Member Zasada stated the property is zoned R-3 Moderate Density Multi-Family Residential. He stated there are nine (9) legal principal permitted uses in this district. He explained those uses include 1) a cemetery, mausoleum, or columbarium; 2) multi-family dwelling; 3) place of religious exercise or assembly, 4) public or private park, golf course, or similar natural recreation area; 5) public, private, or parochial school approved by the State of Iowa; 6) railroad or public or quasi-public utility, including substation; 7) single-family residential; 8) townhouse; and 9) two-family dwelling or duplex.

Staff Member Zasada reviewed the definition of unoccupied stating the City of Dubuque Code of Ordinances defines it as not engaged in any principal permitted uses or conditional uses designated for the zoning district in which a building is located. He stated there are no principal permitted uses under the R-3 district the property is being used for. Staff Member Zasada also stated the noted storage is not a legal principal permitted use and there are no current building permits for the noted rehabilitation. He stated therefore, the storage of materials inside and outside of the property is illegal.

Chairperson Beard asked whether other activities are allowed on the property. Staff Member Johnson stated currently only those that are listed principal permitted uses for the district. Chairperson Beard questioned how dwelling might be further defined. Staff Member Johnson

stated to dwell in a building is to live in a building. Board Member Wilberding noted the fact that water and plumbing is not being used clearly speaks to occupancy.

The Board offered Mr. Hoover an opportunity of rebuttal. Mr. Hoover questioned whether missing or chipped paint should contribute to defining occupancy. Mr. Hoover stated water consumption should not be the controlling question, and other utilities should also be a consideration. He stated storage is a primary use in single-family homes. Mr. Hoover stated there is nothing illegal about storing building materials and Mr. White will get permits for whatever he needs to do. Mr. Hoover stated if water is not used, it's because uses in the building do not require water. Mr. Hoover noted City Staff has not inspected the interior of the building.

Building Services Staff was offered final rebuttal. Staff Member Zasada reiterated the legal principal uses in the R-3 Moderate Density Multi-Family Residential district. He explained any other activities need to be accessory or related to that. He explained the only way the building could legally be used for storage is if the building were being used for a principal permitted use. He explained the building cannot be used for storage if it's not being used for a principal permitted use. Staff member Zasada reiterated the property has not consumed water in a 12-month period; therefore, the property also meets that criteria.

Staff Member Johnson stated the role of the Board is to determine whether they agree with Staff's interpretation of the conditions of the building and whether it meets the definition of a Vacant or Abandoned Building. He explained City Code does not require the Board find the building meet all criteria, rather it needs to meet one or more of the criteria. Do the facts as presented, and as interpreted by the Board qualify the property as vacant or abandoned?

The Board discussed the appeal noting the zoning, principal permitted uses, and the Vacant and/or Abandoned Building criterion presented.

Motion by Wilberding, seconded by Duehr to agree with City Staff's recommendation and declare the building a Vacant and/or Abandoned Building. Motion carried by the following vote: Aye – Swift, Duehr, Wilberding, and Beard; Nay – None.

Vacant and/or Abandoned Building License –1390 Bluff Street: Stuart Hoover, 820 Locust Street, Attorney at Law presented the appeal. He stated he would again like to call Staff Member Zasada as a witness. He presented questions for the Board's consideration. Mr. Hoover asked how does the city consider the building vacant and/or abandoned? He stated the building is not vacant and/or abandoned and it is used for storage and has been for some years. Mr. Hoover questioned why 1390 Bluff Street was inspected. He asked what the definitions and requirements are to qualify a building as vacant or abandoned under the ordinance. He asked what zoning district 1390 Bluff Street is in and what are the principal permitted uses in that district. He asked if a private museum is allowed in the district. Mr. Hoover asked what activities can legally be done in the zoning district. Mr. Hoover asked what one is legally allowed to do in one's home and are there limits and conditions on them. He asked if someone must perform all principal activities to live in a home. Mr. Hoover asked whether the city is aware of personal property and use in 1390 Bluff Street and neighboring buildings. He asked if there's a definition for storage and whether he knows the property is used for storage and frequency of occupancy and maintenance. Mr. Hoover again questioned

whether the water utility alone can qualify a building as vacant and/or abandoned. Mr. Hoover noted the building is used and storage and questioned if City Staff knew how frequently it is used. Mr. Hoover explained the property owner acquired the building and removed tenants; however, the building can still be used residentially.

Staff Member Zasada reviewed the staff report. He stated the appellant is requesting the order to license 1390 Bluff Street as a Vacant and/or Abandoned building to be reversed because the Building Official has misinterpreted the true intent of the Code or rules. He stated the City of Dubuque Code of Ordinances defines a Vacant Building as any building or portion thereof which has been unoccupied for a continuous period over twelve (12) months and which meets one or more of the following criteria: it is A. Unsecured; B. Secured by means other than those used in the design of the building; C. Declared a "dangerous building" as defined in this section; D. Unfit for occupancy as determined by the City Manager; E. Noncompliant with the International Property Maintenance Code; F. Has Housing, Building, Fire, Health or Zoning Code violations; G. Open to vagrants, vandals, children or the unwary; or H. Not consuming or using one or more utilities provided by any one or more of the public utilities. He noted for the purposes of city code, public utilities are defined as water, natural gas, and electricity.

Staff Member Zasada stated the City of Dubuque Code of Ordinances defines an abandoned building as any building or portion thereof which has stood with an incomplete exterior shell for six (6) months or longer which meets one or more of the following criteria: it is A. is unsecured; B. is unoccupied; or C. is in violation of the International Property Maintenance Code, International Building Code, International Residential Code, or International Fire Code adopted by the City of Dubuque.

Staff Member Zasada explained on April 8, 2019 Building Services Staff completed a review of the property located at 1390 Bluff Street. At that time, City Staff found evidence that the building qualifies as a Vacant and/or Abandoned Building. Staff Member Zasada reviewed the following findings: 1) The building has been continuously unoccupied for 12 months or more. The water was shut off at the stop box and the water meter was removed 12/10/2014. Public water has not been consumed or in service for over four years. In accordance with IPMC 501.2 it is unlawful for anyone to occupy any structure or premises where kitchen sinks, lavatories, laundry facilities, bathtubs and showers are not supplied with hot or tempered and cold running water in accordance with the International Plumbing Code. In addition, P2901.1 of the 2015 International Residential Code requires potable water be supplied to plumbing fixtures and plumbing appliances.

Staff Member Zasada added that the property is a principal structure on its own parcel zoned OR Office Residential District. He stated storage is not a principal permitted use in the OR Office Residential District. Given the lack of utilities and allowed principal uses, this building is not, nor has it been for some time legally habitable or zoned to allow for storage. He stated the building also cannot be considered accessory to any other neighboring buildings since it is situated on its own lot and accessory buildings or structures may not be located on separate lots as per the Unified Development Code.

Staff Member Zasada noted another criterion is the building has Housing, Building, Fire, Health or Zoning Code violations. Mr. Zasada stated the downspout on the Bluff Street Façade is in poor repair in violation of 304.7 of the 2015 International Property Maintenance Code. He

noted there is also peeling, flaking and chipped paint on the building in violation of 304.2 of the IPMC: Protective Treatment.

Staff Member Zasada also explained the building has not consumed or used one or more utilities provided by any one or more of the public utilities. He stated the water was shut off at the stop box and the water meter was removed 12/10/14. Public water has not been consumed or in service for over four years. He noted in accordance with IPMC 501.2 it is unlawful for anyone to occupy any structure or premises where kitchen sinks, lavatories, laundry facilities, bathtubs and showers are not supplied with hot or tempered and cold running water in accordance with the International Plumbing Code. In addition, P2901.1 of the 2015 International Residential Code requires potable water be supplied to plumbing fixtures and plumbing appliances.

Staff Member Zasada stated Building Services Staff finds the evidence shows 1390 Bluff Street qualifies as a Vacant and/or Abandoned building under City Code and recommends the Board uphold the decision of the Building Official. Staff Member Zasada reviewed the role of the Building Code Board of Appeals for appeals noting the Board cannot waive code requirements, but they may reverse or modify a decision of the building official only on finding that the building official had incorrectly interpreted the provision of this Code; or the decision of the building official creates an unnecessary hardship upon the appellant.

In response to Mr. Hoovers additional questions, Staff member Zasada noted the property is zoned OR Office Residential District. Staff Member Zasada explained there are sixteen (16) principal permitted uses in this district. He provided the following principal permitted uses: 1) art gallery, museum or library; 2) artist studio; 3) general office; 4) hospice; housing for the elderly or persons with disabilities; 5) medical office; 6) mortuary or funeral home; 7) multi-family dwelling; 8) nursing or convalescent home; 9) parking structure; 10) parking structure; 11) place of religious exercise or religious assembly; 12) public, private, or parochial school approved by state of Iowa; 13) railroad or public or quasi-public utility, including substation; 14) school of private instruction; 15) single- or two-family dwelling unit within an existing structure only; or 16) townhouse.

Staff Member Zasada explained the building was used as an apartment building until 2014 when the water was disconnected. It was a multi-family dwelling at that time. Since that time, there has been no change of occupancy permit for the property, so any change in use would be inappropriate without an occupancy permit. Staff Member Zasada explained this property was brought to his attention from a citizen complaint. Staff Member Johnson noted all legal principal permitted uses in the OR Office Residential District would require water for occupancy.

Mr. Hoover stated he did not think an art gallery, private museum or office would require water. He stated there are any number of uses that do not require water. Mr. Hoover stated the building has electricity and the uses Mr. Kopczyk puts to it. He stated Mr. Kopczyk uses the Ryan house as his private museum and he uses 1390 Bluff as accessory to that. Staff Member Zasada explained all the principal permitted uses in the OR Office Residential District would require a flushable toilet which would require water. Staff Member Zasada reiterated storage is not a principal permitted use and off premise storage accessory to the Ryan House is also not allowed. Staff member Johnson stated Building Services Staff conferred with the Planning Services Department regarding the zoning on the property. He reiterated the property is a

principal structure on its own parcel, with its own address, zoned OR Office Residential District. He stated storage is not an allowed principal permitted use in the OR Office Residential District.

The Board discussed the appeal. Board Member Duehr stated for the building to be legally occupied, it must have water. Board Member Wilberding stated all questions have been covered. Chairperson Beard stated the definition of a Vacant and/or Abandoned Building is clear and the findings align with that definition.

Motion by Wilberding, seconded by Duehr to uphold City Staff's findings that the building is Vacant and/or Abandoned. Motion carried by the following vote: Aye – Swift, Duehr, Wilberding, and Beard; Nay – None.

ITEMS FROM PUBLIC: None

ITEMS FROM BOARD: None

ITEMS FROM STAFF: None

ADJOURNMENT:

Motion by Duehr, seconded by Wilberding to adjourn the July 16, 2019 meeting. Motion carried by the following vote: Aye – Swift, Duehr, Wilberding, and Beard; Nay – None. The meeting was adjourned at 3:56 p.m.



David Johnson, Building Services Manager

July 18, 2019

Adopted