

**MINUTES OF THE  
ROCK ISLAND BOARD OF ZONING APPEALS**

**Regular Meeting**

**5:30 p.m.**

**July 13, 2022**

ATTENDANCE:	<input checked="" type="checkbox"/> Present	<input type="checkbox"/> Absent
<input type="checkbox"/> Kevin Day		<input checked="" type="checkbox"/> Pandora Lawrence
<input checked="" type="checkbox"/> Donald Mewes		<input checked="" type="checkbox"/> Nicole Parker
<input checked="" type="checkbox"/> Gary Snyder		<input checked="" type="checkbox"/> Bill Sowards
<input checked="" type="checkbox"/> Tanja Whitten		

Staff Present: Miles Brainard, Alan Fries.

Chair Snyder called the meeting to order at 5:30 p.m.

**General Public Comments** – There was no one present to make any general public comments. The meeting continued.

**Approval of Written Agenda** – Ms. Parker made a motion to approve the written agenda for the meeting. Ms. Lawrence seconded the motion, and it passed unanimously.

**Approval of Minutes** – Mr. Mewes made a motion to approve the minutes of the May 11, 2022 regular meeting. Ms. Parker seconded the motion, and it passed unanimously.

**Procedural Explanation** – Chair Snyder explained the procedure to be followed for the public hearings.

**Public Hearing #2022-08:** The applicant, Jeff Dimer, representing property owners at 3456 17<sup>th</sup> Street for a variance of 15 feet of the 30 foot rear yard setback requirement in an R-1 (one unit residence) district.

Mr. Fries presented the staff report. He said the zoning ordinance requires a minimum rear yard of 30 feet in an R-1 district. (Chapter 13, Section 6). The applicant proposes to construct an attached garage addition (15' x 22') in the west rear yard.

Currently there is a two car attached garage on the west side of the dwelling and the homeowners propose an approximate one-car addition to the west to store lawn care equipment in the new space. Currently there is a 30 foot rear yard setback on the west and the 15 foot addition will reduce the setback to 15 feet. The homeowners currently own the vacant lot directly to the west, which also has a steep topographic incline from 15<sup>th</sup> Street. This would make it very challenging to locate a dwelling on that lot.

Chairman Snyder called for the applicant.

Jeff Dimer, 3401 South Shore Drive and who was also representing the property owners, was sworn in. He said the property owners also own the vacant property to the west and want to keep it vacant as a buffer and to keep future options open. He said the variance does not affect any other property owner in the neighborhood.

As there were no other questions and one else wished to speak, the public hearing was closed.

**Decision Case #2022-08** – Mr. Sowards made a motion to approve the request for variance because:

1. Reasonable Return: The proposed variance will improve the return on the property.
2. Unique Circumstances: The rear yard is determined to be the yard to the west since the Zoning Ordinance identifies the rear yard in relation to a public street to the east. This yard is smaller than the other yards on the property.
3. Character Alteration: The proposed variance will not alter the character of the neighborhood.

Mr. Mewes seconded the motion, and it passed unanimously (Sowards, Lawrence, Mewes, Parker, Whitten and Snyder).

**Public Hearing #2022-09:** The applicant, Brandon Albertson, at 3008 7<sup>th</sup> Avenue, requests a variance to allow two principal structures on one property in a B-3 (community business) district.

The zoning ordinance requires that there be one principal structure on a property (Chapter 11, Section 20). The applicant proposes to convert the existing accessory structure south of the main pub/dining structure into a second principal structure for additional year round indoor pub/dining space.

The approximate 2,600 square foot principal structure is located on the north side of the site facing 7<sup>th</sup> Avenue. The approximate 960 square foot accessory structure that will be converted into a principal structure is located approximately six feet to the south of the principal structure. The applicant has explored connecting the two structures, but explains there are potential drainage and fire fighter access issues that make the connection unfeasible. He said the Board's decision would be in the form of a recommendation to the City Council due to the size of the business zoned property.

Chair Snyder called for the applicant.

Brandon Albertson, 47 Country Club Court in LeClaire, Iowa, was sworn in. He said it is a pre-existing condition and it would not be feasible to connect the two structures because of ADA requirements and potential drainage issues and impeding other City Code requirements. He said he needs the additional space for larger group parties.

As no one else wished to speak, the public hearing was closed.

**Decision Case #2022-09** – Ms. Whitten made a motion to recommend to the City council approve the request because:

1. Reasonable Return: The proposed variance will improve the return on the property.
2. Unique Circumstances: The lot is a corner lot with two front yards.
3. Character Alteration: The proposed variance will not alter the character of the neighborhood.

Ms. Parker seconded the motion.

Mr. Day suggested that the motion should state that the variance is approved only for a six foot tall privacy fence in the south front yard and not both front yards.

Ms. Lawrence and other Board members agreed to place that more clarifying information would be appropriate, she withdrew her previous motion.

Ms. Parker also withdrew her previous second.

Ms. Lawrence then made an amended motion to approve a variance for two feet of the four foot maximum fence height for six foot tall privacy fence for only the south front yard as identified on the drawing and information submitted by the applicant because:

1. Reasonable Return: The proposed variance will improve the return on the property.
2. Unique Circumstances: The lot is a corner lot with two front yards.
3. Character Alteration: The proposed variance will not alter the character of the neighborhood.

Ms. Parker seconded the motion, and it passed unanimously (Sowards, Lawrence, Mewes, Parker, Whitten and Snyder).

**Public Hearing #2022-10:** The applicant, Patrick Noya, at 1009 21<sup>st</sup> Street, requests an Authorized Use for a major Home Occupation for a not-for-profit office in a R-2 (one and two unit residence) district.

Mr. Fries presented the staff report. He said Interested Party Statements had been received from Beth A. Johnson, 1015 21<sup>st</sup> Street, Jeanette Jones, 1010 21<sup>st</sup> Street, Jennifer Gardner, Assistant States Attorney's Office 1317 3<sup>rd</sup> Avenue and Detective Tina Noe, Rock Island Police Department. He said the form from Detective Noe did not arrive by the July 8<sup>th</sup> deadline, but the Board could consider allowing her to be an Interested Party or not.

He said the zoning ordinance requires Board Authorization for a Major Home Occupation in a R-2 zoning district (Chapter 14, Section 4). The applicant proposes to maintain a not for profit organization office in the residence.

The City received a complaint from a neighbor indicating that nonresidents were coming to the property to utilize the services of the not for profit office organization. Staff determined that this was a Major Home Occupation based on language in the Zoning Ordinance that states this type of "occupations are those...where either non-resident customers and/or employees come to the property for the purpose of furthering the business enterprise of the home occupation" The applicant has indicated to Staff that people come to his property/office to get help with applying for and filling out forms for several types of community services. Staff suggested to the applicant that this type of not-for-profit office service could be done at a neutral business (restaurant) or public site (park or public library), but were informed by the applicant that it is not feasible for his situation. Given that there has been a neighborhood complaint about the Major Home Occupation, Staff recommends denial of the Authorized Use request.

David Morrison, City Attorney, said in his opinion the Board can consider the information submitted on the Interested Party form submitted by Jennifer Gardner and her testimony at the hearing is relevant to factor in Board consideration of the three conditions to approve a variance

or Authorized Use identified in the Zoning Ordinance (reasonable return, unique circumstances and character alteration).

Mr. Mewes clarified that the Board can take this information into account in determining if the request fails to meet the three identified categories in the Zoning Ordinances for requests to the Board.

Mr. Morrison said yes that information can be considered.

Chair Snyder called for the applicant, or their representative.

Vincent Thomas, 1000 21<sup>st</sup> Street, was sworn in. He read a printed letter that he has submitted copies to Board members, which included his recommendation to disregard the need for an Authorized Use for Mr. Noya. He said he has lived at that location since 1976 and that people visiting the subject property seeking advice has not altered the character of the neighborhood. He said most of the assistance he gives to callers is digital or by telephone. He said the church that he is a Reverend has helped many people. He said many neighbors, friends, relatives and churchgoers attended a graduation party for one of Mr. Noya's daughters on June 12<sup>th</sup> and a neighbor (Jeannette Jones) complained to the Police Department about noise from the party. He said Police Officers that responded to the call about the party did not close down the party due to noise. He said there are no parking or trash issues and the activity has not altered the character of the neighborhood (photographs submitted by Mr. Thomas and he said they illustrate that there are no parking issues on 21<sup>st</sup> Street were distributed to the Board). He concluded by saying for two years Mr. Noya has not stepped past his own lawn and it is unnecessary for him to have to seek the Authorized Use for his assistance and advice to people.

Ms. Whitten asked how many people seeking assistance come to the property per day. Mr. Thomas replied one person in the last few days and one other person was sitting on the porch. He said several people came on Sunday.

Ms. Whitten then asked if Mr. Noya has tried to give his assistance and advice digitally through things like ZOOM, or via telephone. Mr. Thomas said he has tried those things.

Ms. Lawrence asked if he tried using those things during the Covid Pandemic. Mr. Thomas said Mr. Noya has two not-for-profit organizations and has used those things during the pandemic.

Chair Snyder asked for Interested Party Statement signer Beth Johnson, 1015 21<sup>st</sup> Street, to come forward with questions for Mr. Thomas. Ms. Johnson said she did not have any questions.

Chair Snyder then asked for Interested Party Statement signer, Jennifer Gardner, Assistant States Office at 1317 3<sup>rd</sup> Avenue, to come forward with questions for Mr. Thomas.

Jennifer Gardner, Assistant States Attorney Office at 1317 3<sup>rd</sup> Avenue, was sworn in. She asked

if Mr. Thomas was aware of Mr. Noya's not for profit organization being identified as New Dawn International Children and Family Services Inc. Mr. Thomas replied that he was.

She then asked if he was aware of any children, other than Mr. Noya's children were at the graduation party for one of Mr. Noya's children. Mr. Thomas said there were no other children present. Chair Snyder then asked if there were any other Interested Party Statement individuals that had questions for Mr. Thomas.

No others came forward.

Chair Snyder then asked for proponents of the request to come forward.

Beth A. Johnson, 1015 21<sup>st</sup> Street, was sworn in. She said that Mr. Noya has hosted meetings with many guests from diverse backgrounds and that it has been an attractive aspect of having diversity that has not had a negative effect on the character of the neighborhood. She said it has a person cannot tell the difference between a friend coming over to visit Mr. Noya and a not for profit office activity. She said that people can use the City as a weapon against people, but that there have been no disturbances of disruptive situations from Mr. Noya's property.

Bill Cornelius, 1309 19<sup>th</sup> Avenue in Moline, was sworn in. He said that he has been a realtor for 42 years and is selling the property to Mr. Noya on contract. He said that he has helped for the past ten years finding homes for church members and that he is amazed by Mr. Noya's work and church. He said that he still believes in Mr. Noya.

Chair Snyder called for opponents.

Jennifer Gardner, Assistant States Attorney's Office, who already has been sworn in said she was the prosecutor in the case against Mr. Noya and that he was found guilty on two counts of aggravated criminal sexual; abuse. She said that when he was a high school teacher he separately detained two high school girls in a room was found guilty of touching in a sexual way one girl and on a second count guilty of touching his private parts against a girl for sexual gratification. She said the Court allowed four other girls to testify of similar things against Mr. Noya. She said that one of these activities was in the home of the girl's mother that he was there to provide some of the services of his not-for-profit organization. She said he was found guilty and ordered to have no contact with anyone under the age of 18 , other than his own children, and is now awaiting sentencing. She said she was not aware of his daughter's graduation party, so she asked the question regarding whether other minor children were in attendance.

She said that by doing a web search for the applicant's address identified that the office for his not for profit organization is identified as being located at his address. She said that information from the Chamber of Commerce identified his not for profit as a business and also that on Mr. Noya's Facebook page it identified that his organization assisted children and families with

photos of children on tit had photos of children also. She said that he acts fine when he is around adults, but very different person when he is around children.

Mr. Sowards asked if he would need to register as a child sex defender and have to be located a distance from children. Ms. Gardner said yes and the separation distance is 1,000 feet.

Chair Snyder asked for Mr. Thomas had any questions to ask Ms. Gardner.

Mt. Thomas said her testimony is completely out of line. He asked if she is aware that there have been juries that have found innocent people guilty. He cited some examples of situations that have been the case.

Chair Snyder called for opponents.

Lindsay Hocker, 1929 9<sup>th</sup> Avenue, was sworn in. She said that agrees with the City Staff report to the Board as it is a sound recommendation. She said she does not think the Authorized Use should be approved by the Board.

Chair Snyder called for the final statement from the applicant's representative. He asked that there be new statements and information and not be a repeat of information that the Board has already heard.

Mr. Thomas thanked the Board for listening to his comments.

As no one else wished to speak, the public hearing was closed.

**Decision Case #2022-10** – Mr. Mewes made a motion to deny the request because:

1. Reasonable Return: The property can yield a reasonable return without approving the authorized use for a major home occupation.
2. Unique Circumstances: There is not a unique circumstance to approve the authorized use for a major home occupation.
3. Character Alteration: The proposed authorized use for a major home occupation will alter the character of the neighborhood.

Mr. Sowards seconded the motion.

Mr. Mewes said he does not like having to be involved with a case like with the type of information that has been presented at this hearing and asking to continue to have a business that could have children present in the residence.

Ms. Lawrence said she feels uncomfortable due to the information presented at the hearing. She added that the character of the environment of the neighborhood is changing because of some of the actions involved with this request.

Mr. Mewes said that if it wasn't for the legal issues surrounding this case it would likely be looked at differently by the Board. He said it puts the Board in a difficult spot deciding on this request as it appears to be an organization that says it is focused on helping the needs of people. However, is this the best person and best location to have this not for profit office.

Chair Snyder said the Board has never had a situation like this during his time on the Board.

Mr. Morrison asked if he could clarify some information regarding the Board's decision making process on zoning ordinance variance type requests. He reminded the Board to focus on the three conditions to consider when deciding to approve a variance and/or authorized use identified in the Zoning Ordinance.

Ms. Parker said that it is proposed to continue to have a business being located in a residential neighborhood in the Broadway neighborhood.

Chair Snyder asked for a vote on the motion to deny the request and it passed with Mr. Mewes, Mr. Sowards, Ms. Parker, Ms. Whitten and Mr. Snyder voting aye and Ms. Lawrence abstaining.

**Other Business-**

Mr. Brainard said the City of Rock Island is committed to the fair and equitable treatment of all people and that we as staff do not claim to be perfect, but we do our best to meet those standards. He commended the Board for doing its best tonight and always.

**Adjournment:**

Chair Snyder adjourned the meeting at 7:17 p.m.

Respectfully submitted,

Alan Fries  
Acting Secretary, Rock Island Board of Zoning Appeals

