

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

Regular Meeting

7:00 PM

June 12, 2013

ATTENDANCE:	<input checked="" type="checkbox"/> Present	<input type="checkbox"/> Absent
(x) Kevin Day		(x) Karen Williams
(x) Dave McAdam		<input type="checkbox"/> Larry Tschappat
(x) Gary Snyder		(x) Robert Wild
<input type="checkbox"/> Faye Jalloh		

Staff Present: Alan Fries and Ben Griffith

Chairman Snyder called the meeting to order at 7:00 PM.

Approval of Minutes – Mr. Wild made the motion to approve the Minutes of the May 8, 2013 meeting. Mr. McAdam seconded the motion, and it passed unanimously.

Procedural Explanation – Chairman Snyder explained the procedure to be followed for the public hearing. He said there are two Interested Parties identified for Case #2013-19.

Public Hearing #2013-18 - Request from Johnnie Clemmons for a special exception to approve a one-year temporary use in an R-3 (one and two family residence) district at 3800 9th Street.

Mr. Fries presented the staff report. He explained that the zoning ordinance requires Board authorization to approve stipulations for a nonconforming use (Section 5.12). The applicant proposes to take up to one additional year to fulfill stipulations to provide a vehicle-sized overhead door required to be located on the east side of the building and a new driveway leading from the overhead door to 9th Street.

The Board approved the vehicle repair business in May 2012 with the stipulation that a vehicle sized door be located on the east side of the building to help with traffic flow and that the new driveway off of 9th Street be allowed to be gravel for one year from date of approval. Mr. Clemmons has not met the requirements of the stipulations and is asking for an additional year to meet the requirements. He indicates that the owner of the property has promised to have the work done, but has not yet begun the project.

Several residents objected to the original request and use due to the traffic the use created on 38th Avenue, which is a narrow dead-end street that extends into a residential neighborhood. Neighbors also indicated that the street has been blocked by tow trucks that have brought vehicles to the subject business.

The business does not do any body repair on vehicles, but has done some major repair work (engine and transmission repair work). The business has two full-time workers and operates from 9:00 a.m. to 5:00 p.m., Monday through Friday. There is space to park four stacked vehicles on the west side of the building.

Staff recommended denial of the original request back in May 2012 because the use is not appropriate for the site due to the off-street parking being stacked and not providing adequate space to maneuver vehicles on the site. Staff also identified that the potential for noise and the proximity of the structure to adjacent residential uses will alter the character of the neighborhood. Staff believes that the stipulations being met is essential to minimizing the negative impact of the business on the neighbors and recommends that the request for an additional year to meet the stipulations be denied.

Chairman Snyder called for proponents.

Johnnie Clemmons, 3802 9th Street, was sworn in. He said that he has put in gravel for the driveway off of 9th Street, but needs additional time to complete all of the work.

Chairman Snyder asked why it is taking so long to complete the work. Mr. Clemmons replied that the property owner promised to complete the work, but has not done anything about it. He added that he is trying to purchase the property.

Ms. Williams asked how long of a time does he need to complete all the work stipulated by the Board. Mr. Clemmons replied two months.

Steven White, 2137 16th Street, was sworn in. He said Mr. Clemmons has helped young people learn about vehicle repair and just needs some extra time to complete all of the work.

Chairman Snyder asked Mr. Clemmons to return to the podium for some additional questions. He asked him if he had looked at relocating his business since he does not own the subject property and the owner has not done any of the work he promised to do. Mr. Clemmons replied no.

Chairman Snyder asked how long his lease was. Mr. Clemmons replied it is a five year lease and he has three years left on it.

Chairman Snyder asked him if six months was adequate time to complete all the required work. Mr. Clemmons replied it was.

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

Decision Case #2013-18 – Mr. McAdam made a motion to approve the request for six months because:

1. The proposed use will improve the return on the property.
2. The proposed use will not alter the character of the neighborhood.

Ms. Williams second the motion, and it was approved unanimously.

Public Hearing #2013-19 - Request from Dave Parochetti for a variance of 13’ 6” of the 30-foot north rear yard building setback requirement for a commercial use adjacent to a residential zoning district, a variance of 8’ 6” of the 15-foot wide landscape area requirement along the north property line and a variance of five feet of the 10-foot wide landscape area requirement adjacent to a parking area along the south front yard in an B-3 (community business) district at 3825 18th Avenue.

Mr. Fries presented the staff report. He explained that the zoning ordinance requires that B-3 zoned commercial uses adjacent to R-3 zoning have a 15 foot wide bufferyard and a 30 foot setback requirement (Sections 27.6 and 36.6), a ten foot wide landscape area for a parking area adjacent to a public street (Section 36.5) and a six space stacking area for drive thru area (Section 8.14D13). The applicant proposes to locate a three-unit commercial structure (approximately 4,056 square feet in total area) with a restaurant drive thru on the north side of the site.

The applicant proposes to construct a 4,056 square foot commercial structure on the site. The proposed one-story structure would have up to three separate commercial uses (one or two may be food service with one use

having a drive-through lane on the north side of the property (see attached site plan). This revised site plan provides for better access for the site, but reduces the north building and bufferyard setback.

The applicant indicates that since there already a privacy fence located on the property to the north he will not locate another privacy fence on the subject property, but would locate landscaping within the 6.5 foot wide bufferyard area. The proposed restaurant use that will utilize the drive-through lane will not be a restaurant that will have “late-night” hours (the Zoning Ordinance does not regulate business hours).

A total of 17 parking spaces will be provided on the site. This meets Ordinance parking requirements based on the proposed uses. The applicant also has a cross easement parking agreement with the owners of the property where the auto parts store is located (west of the site). This agreement will also allow customers and/or employees to park in the adjacent 42 space lot parking lot.

Mr. Fries said there were two Interested party Statements received from John Brixey, 1553 39th Street and Mark D. Churchill, attorney for Hazel Wakeland, 1716 39th Street.

Chairman Snyder called for proponents.

Dave Parochetti, 48 Country Club Court in LeClaire, Iowa, was sworn in. He said there is one change as only one of the three uses would be a restaurant.

Mr. Fries said that depending on what uses eventually locate on the site that there may be a need for a future parking variance.

Terra Moffit, 1120 Arlington Avenue, Davenport, was sworn in. She said she was an attorney representing Mr. Parochetti. She said that the site is undeveloped and when improved will be a benefit to the City with added tax revenue. She added it is the best use for the commercial zoned property.

Mr. McAdam asked what type of restaurant will located on the site. Ms. Moffit replied a Jimmy Johns.

Chairman Snyder asked for Interested Party cross-examination questions.

Mr. Churchill said he had no questions.

Mr. John Brixey, 1553 39th Street, was sworn in. He said he has lived at his property for 37 years. He asked why there was no parking lot permit applied for.

Mr. Fries replied that a parking lot permit was required for only when the only use for the site was a parking lot. In this case a building permit would be issued for the entire site development, which would also cover the parking lot.

Mr. Brixey asked if Mr. Parochetti owned the Taco Bell around the corner on 38th Street. Mr. Parochetti replied that did.

Mr. Day arrived at the meeting at 7:43 p.m. Chairman Snyder said he would not be able to vote on the request since he was not present at the beginning of the public hearing.

Chairman Snyder asked for proponents.

Ms. Joy Murphy, 4502 7th Avenue and 6th Ward Alderwomen, was sworn in. She said she supports the request because it would develop a vacant property along a business corridor. She added that the property to the north already has a business use on the first floor of the two story structure.

Chairman Snyder called for opponents.

Mr. John Brixey, 1553 39th Street, said he is opposed to the request because of the garbage pick-up area located on the east front yard of the site. He said shrubs should be located off the street to buffer the use from adjacent residential uses. He said that parking spaces on the west side of the development would back out into an alley and that parking on 39th Street would be a problem because it is only allowed on one side of the street. He said that there is poor drainage on 39th Street due to no curbs. He said that vehicles for the drive-thru could also back up onto 39th Street when the restaurant is busy. He said the site is too small for this type of development.

Mark D. Churchill, 267 127th Avenue in Milan, was sworn in. He said he is representing Ms. Wakeland and she has lived on the adjacent property for 20 years. He said that landscape buffers were required in City ordinances to minimize impacts on residential neighbors and that reducing the north bufferyard down to six feet with the added lights, noise and constant flow of traffic was a problem. He said the request does not meet any of the three reasons to approve a variance identified in the Zoning Ordinance.

Sergei Czerewko, 1602 39th Street, was sworn in. He said he has lived there for 22 years and that the increased traffic from the use would be a problem. He agreed that the site was too small for the proposed use.

Chairman Snyder called for a rebuttal.

Mr. Parochetti said that the alley to the west of the site has been vacated by the City and is now private property. He said that the building is the size he needs in order to get enough return on the property. He said the neighbor to the north has a privacy fence to go along with his proposed landscaping (he submitted a landscape plan with a row of 30 arborvitae trees along the north property line). He said the Jimmy Johns will not be open late hours as the others in the area close at 9:00 or 10:00 at night during the week and midnight on weekends.

Mr. Churchill said that it is the applicant's burden to prove his request meets ordinance requirements. He said there is also no other developer to testify that the site cannot be developed at all.

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

Decision Case #2013-19 – Mr. Wild made a motion to approve the request because:

1. The proposed variances will improve the return on the property.
2. The lot is a corner lot with two front yards.
3. The proposed variances will not alter the character of the neighborhood.

Mr. McAdam seconded the motion.

Ms. Williams said she will vote against the motion because the site can have a reasonable return without the variances and there is not a unique circumstance for this site. She said if approved, the Board's decision could be overturned in court.

Chairman Snyder said the first and third conditions are somewhat subjective and since he has been on the Board they have used corner lots with two front yards as a unique circumstance to approve variances.

Ms. Williams said she has used these criteria on a case by case basis and does not think they apply to this case. She said she supports business development and encourages the applicant to come back with a revised request for the site.

Chairman Snyder said he supports commercial development also and that this site is along the 18th Avenue commercial corridor.

He then called for a vote on the motion to approve the request and it failed to receive the four required votes with Mr. McAdam, Mr. Wild and Chairman Snyder voting aye, Ms. Williams voting nay and Mr. Day abstaining from voting.

Public Hearing #2013-20 - Request from Willie Hoskins for variances from the fence height and setback from point of intersection for a fence in an R-3 (one and two family residence) district. The applicant proposes to replace an existing fence with a 5-foot tall chain-link fence in the north, west and south front yards at 1104 19½ Street.

Mr. Fries presented the staff report. He explained that the zoning ordinance requires that fences in a front yard not exceed 3.5 feet in height and that there be a setback of 25 feet from point of intersection for fences on a corner lot (Section 8.12). The applicant proposes to replace an existing fence with a five-foot tall chain-link fence in the north, west and south front yards.

The applicant will remove the existing fence and construct the new chain-link fence at approximately the same location. The proposed five foot tall fence will be located at the average grade level of the site (which has been identified as approximately two feet above street level). There will be a two-foot tall retaining wall along the edge of the property adjacent to the public sidewalks.

The chain link fence will allow good visibility at each of the corners (19½ and 20th Avenues). The applicant will also put some screening (slats between the chain-links of the fence) in the mid-point of the lot of the adjacent to 11th Street (this area will not be within the 25 foot area from the point of intersection of the fences at the corners). This screening will provide some privacy to the residence and yard area.

Chairman Snyder called for proponents.

Willie Hoskins, 1104 19½ Avenue, was sworn in. He said there will be area left available for access for the utility company, but other than that area the fence will come up to the property line at the corners.

Mr. McAdam asked if he knew where the property line was. Mr. Hoskins replied that he did and would not disturb any sidewalk work needed to be done by the City. He added that his existing fence is 20 years old and he wants to improve the look of his property.

Mr. Day asked where water will drain from the yard. Mr. Hoskins replied that it will drain from the base of the new retaining wall to the sidewalk.

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

Decision Case #2013-20 – Ms. Williams made a motion to approve the request because:

1. The proposed fence will improve the return on the property.
2. The lot is a corner lot with two front yards.
3. The proposed fence will not alter the character of the neighborhood.

Mr. Wild seconded the motion, and it passed unanimously.

Public Hearing #2013-21 - Request from Arthur Friday for a special exception to allow a two-year temporary use for a residential dwelling on the first floor in a B-1 (neighborhood business) district at 4109 14th Avenue.

Mr. Fries presented the staff report. He explained that the zoning ordinance requires that residential dwelling units only be allowed above a first floor in a B-1 zoning district (Section 25.2). The applicant proposes to maintain a first-floor dwelling unit on the eastern end of the first floor of a two-story structure for up to two additional years from what was approved in 2012 (one existing non-conforming residential dwelling unit is located on the first floor of the west end of the structure and two conforming dwelling units are located on the second floor of the structure).

As previously identified in the staff report in 2012, the only dwelling unit that requires Board consideration is the first floor unit on the east end of the structure. The subject unit had been in commercial use in the past, but the applicant indicates that he has been unable to secure a commercial tenant and desires to continue to get some rent out of the space by allowing a family to live there for at least two additional years. The applicant is still seeking a long-term commercial tenant. He is also working with City housing inspectors to upgrade the unit to meet City Housing Code requirements.

Staff believes that the space should be maintained as a commercial space instead of being converted into residential use. A year has been given to the applicant to continue the residential use and staff believes that a continued residential dwelling use will only make it more challenging to attract commercial tenants. The City has many economic development programs available that could assist the applicant in renovating and marketing the space for commercial purposes.

Chairman Snyder called for proponents.

Arthur Friday, 3801 14th Avenue, was sworn in. He said that he would like the extension to allow for income to come in while he looks for a commercial tenant. He said that the building still has a commercial look for prospective tenants.

Chairman Snyder asked what has he done in order to attract a commercial tenant. Mr. Friday replied that has been talking to some prospective tenants.

Chairman Snyder then asked if he has talked to a commercial realtor. Mr. Friday replied that he has not due to finances.

Mr. McAdam asked what would he do if the Board approved a one year extension instead of two years. Mr. Friday replied that the people who live in the unit would understand since he has told them they would have a 30 day notice if he attracts a commercial tenant. He said the existing tenants do a lot of camping, so they are not living at the site all the time.

Chairman Snyder asked what was the most recent commercial tenant of the space. Mr. Friday replied it was a sewing business called Stiche Niche. He added that before that it was ABC Collectables and a used consignment clothing store.

Mr. Day asked what type of work was he doing to meet building inspection requirements. Mr. Friday replied he has put in new gutters and downspouts and soffits on the building.

Chairman Snyder asked if he thought it was a disadvantage attracting a commercial tenant with a residential use currently occupying the space. Mr. Friday replied that the space was vacant for two years prior to his renting it as residential.

Chairman Snyder called for opponents.

Ms. Joy Murphy, 4502 7th Avenue and 6th Ward Alderwomen said that she was present at the Board meeting last year asking them to not approve the one year temporary use then and is now back again asking that the residential use not be allowed to extend more. She said that the applicant is not doing anything to market the property and has not even put a sign on the property advertising it for lease, so no one would know it was available. She said the City is working with the College Hill District with the goal to create a vibrant commercial corridor in the area and that other businesses have invested money to improve their property. She said that when the applicant was here last year, knew he was only given a one-year temporary use and to give him an extension would only hurt adjacent businesses.

Chairman Snyder called for a rebuttal.

Mr. Friday said that when he asked for the one-year temporary use he did not know that he would need additional time to rent the space. He said that he has not asked for help from the City and just because there is no sign on the property it does not mean he is not trying to lease it. He said that having some money coming in from the property is better than having none.

Chairman Snyder said talking to commercial realtor doesn't cost anything and show that he is trying harder to lease the space.

Mr. Friday said he has talked to a commercial realtor, but has not listed it with them.

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

Decision Case #2013-21 – Mr. Day made a motion to approve a one-year temporary use because:

1. The proposed variance will improve the return on the property.
2. The proposed variance will not alter the character of the neighborhood.

Mr. Wild seconded the motion, and it failed to receive the required four affirmative votes with Mr. Day, Mr. McAdam and Mr. Wild voting aye and Ms. Williams and Chairman Snyder voting nay.

Public Hearing #2013-22 - Request from Roxanne Duarte for a variance to maintain an accessory structure on a parcel without a principal structure in a R-4 (one to six family residence) district at 2513 5½ Avenue.

Mr. Fries presented the staff report. He explained that the Zoning Ordinance requires that that there be a

primary structure on a property in order to have an accessory structure on a property (Section 3.1). The applicant proposes to maintain a detached garage/storage structure (24' x 24') in the north rear yard.

The principal structure (single family residence) on the property was removed following a fire on the property. The property owner had considered selling the subject property to a neighbor, but has now decided to maintain the property and desires to keep the detached garage for personal storage.

Staff believes that maintaining an accessory structure on a property without a principal structure results in a negative appearance in a residential neighborhood. The structure could also be an enforcement issue in the future as a site for a business or some other non-residential use.

Chairman Snyder called for proponents.

Roxanne Duarte, 2708 8th Avenue, was sworn in. She said her daughter was killed in a fire on the property and she put a memorial in the front yard area of the garage and they have a memorial service every year on the anniversary of her death. She said she uses the garage for storage and that she wants to hold on to the land because of the memories of her daughter.

Mr. McAdam asked if she rents the garage to anyone else. Mr. Duarte replied that she does not.

Ms. Williams said she thinks the property is a small memorial park in the residential neighborhood.

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

Decision Case #2013-22 – Mr. Wild made a motion to approve the request because:

1. The proposed variance will improve the return on the property.
2. The proposed variance will not alter the character of the neighborhood.

Ms. Williams seconded the motion, and it passed unanimously.

Public Hearing #2013-23 - Request from Jeff Conover and Sandy Lamar for a variance of 1.5 feet of the 15-foot maximum height for an accessory structure and a variance to have an accessory structure larger in footprint area than the existing principal structure in an R-2 (one family residence) district.

Mr. Fries presented the staff report. He explained that the zoning ordinance requires a maximum height of 15 feet for an accessory structure (Section 8.5A) and that the accessory structure be smaller in area than the principal structure on the site (Section 3.1). The applicant proposes to remove an existing detached garage and construct a new detached garage (26' x 38' in area and approximately 16.5 feet in height) in the east rear yard.

The applicant proposes to remove the existing one car garage on the site and construct the proposed three-bay detached garage at approximately the same location. The concrete pad for the trailer will also be removed from the site. The proposed garage will “line-up” with the north building line of the residence and will also be slightly larger in area (house is 872 square feet in area while the proposed garage will be 988 square feet in area). The garage height will be 16.5 feet. The applicants intend to eventually build an addition onto the house that will result in the house and garage being all one “connected” structure. Mr. Fries said a letter of support had been received from Rolland Gay of 4318 28th Avenue.

Chairman Snyder called for proponents.

Jeff Conover and Sandy Lamar, 2801 44th Street, were sworn in. Mr. Conover submitted two additional letters of support. The first from Ray and Ruby Messmer, 4504 28th Avenue and the second from Wayne and Laurie Clark, 4405 28th Avenue. Mr. Conover said he has a lot of things that will not fit into his existing garage and that the new garage will make the site look better. He said that the trailer on the property will be removed.

Ms. Williams asked if the structure will be used for commercial purposes or a residential space. Mr. Conover replied no to both.

Joe Cook, 4415 28th Avenue, was sworn in. He said he supports the variances.

Decision Case #2013-23 – Mr. McAdam made a motion to approve the request because:

1. The proposed variances will improve the return on the property.
2. The lot is a corner lot with two front yards.
3. The proposed variances will not alter the character of the neighborhood.

Mr. Wild seconded the motion, and it passed unanimously.

Other Business:

Mr. Griffith said that Jeff Eder, Community and Economic Development Director, has indicated that there will be training planned through a consultant for the Board and Planning Commission in the near future. He said he will inform the Board of the details when they become available.

Chairman Snyder adjourned the meeting at 9:43 PM.

Respectfully submitted,

A handwritten signature in black ink that reads "Ben Griffith". The signature is written in a cursive, flowing style.

Ben Griffith, AICP, Secretary
Rock Island Board of Zoning Appeals