

CITY1875.DSS

Chairperson Blaser called to order the November 1, 2017, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Present

Item 1 – Consent Agenda

Item 1a – Minutes of October 4, 2017

It was noted by Board Member Christiansen that his name was listed incorrectly on page three of the minutes.

Moved by Board Member Celsi; seconded by Board Member Cunningham, to approve the amended October 4, 2017 meeting minutes.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

The opening statement was read by the Chairman.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – Furry Friends Refuge, NE Corner of S. 41st Street and Mills Civic Parkway – Vary the side yard setback from 50 feet to 11 feet for the construction of an animal shelter – Furry Friends Refuge -VAR-003657-2017

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on October 19, 2017, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Christiansen, seconded by Board Member Pfannkuch, the Board of Adjustment accepted and made a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Chairman Blaser invited the applicant to present their variance request to the Board.

Britt Gagne, 515 18th Street, Des Moines, Director of Furry Friends, stated that due to the unusual nature of this property, it was presenting a challenge to develop. The Refuge has been working with engineers and City staff to determine which possibilities would work to construct their animal shelter on this lot without requiring a parking variance, and incorporating all the easements on the site. MidAmerican has several easements on the property and

have been very supportive of working with Furry Friends Refuge to allow access on their site for construction. Ms. Gagne mentioned that they considered asking MidAmerican to rezone their property for Furry Refuge's purpose, but that felt intrusive, and through discussions decided the best approach was to ask for a setback variance. The Refuge had some conversations also with J.B. Conlin, the neighbor directly to the north. Mr. Conlin sent a supportive email which was included in the Board Members agenda packet. She noted that the lot is a good size, 2.37 acres, but is a narrow tract of land. The Refuge intends a phased site plan, with plans to construct the building in 2 phases. To accommodate neighbors who expressed concern regarding noise, the owners are choosing to build in such a way that the first phase of the building becomes a noise buffer, and will then construct the second portion of the building later. Ms. Gagne explained that they are asking for a variance to bring the building closer to the property line as it is very difficult to meet City requirements and allow adequate space for use. They did not believe moving the setback would cause anyone harm. The nearest neighbor would be MidAmerican Energy to the east.

Chairperson Blaser asked whether the Refuge was also requesting a second variance for the 30' setback to the north. Ms. Gagne responded they are asking for both variances at this time. The property to the east has a different zoning classification than the applicant's property. When they construct the 2nd phase of the project, it will have a 12' section of the building that lies fairly close to the property line. The current building plan will not immediately use the second variance but once the second phase of construction begins, it will be necessary.

Board Member Cunningham asked how much later phase 2 construction was planned. He noted that applicants granted a variance have to build within one year, adding that he was hesitant to grant a variance in perpetuity. Ms. Gagne responded that it was more likely outside of one year, but less than five. She added that this is the third facility they've built in six years, so it was difficult to predict.

Board Member Cunningham asked what would the impact be to the applicant's plan, having seen the conditions of approval from the City; would there be a problem if the Board put a time limit on the variance. The applicant would need to come back and request an additional variance at a later date. Ms. Gagne replied that it would be slightly inconvenient and would create more fees, however the variance would be tied to this initial site plan. Without the variance, they might have to go back and revise the site plan.

Chairman Blaser voiced additional concern about the open-endedness of this request commenting that circumstances change, such as geography, finances, etc. He was also concerned about having variance hanging out there for a very long time. He added that he would like to see an end date, no longer than five years. Ms. Gagne replied that they were trying to be efficient on their end. She added that they were asking that the variance be approved for this specific site plan., and that they wouldn't propose another site plan. The variances were solely requested for this site plan, to be implemented at a later date.

Board Member Christiansen questioned whether the current Furry Friends Refuge location on Grand Avenue would stay open. Ms. Gagne added that they would be keeping that location open as well.

Chairperson Blaser then asked if there were any other questions or comments from the audience. Hearing none, he closed the public hearing and requested staff comments.

Brian Portz, Planner for Development Services, presented a drawing including all the easements to show the encumbrances on the lot. He pointed out the a pipeline easement, gas line, 100' aerial electric easement, 50' setback requirement to the north and 60' setback to the south, and the property line location on the east. He noted that approving the variance request appears to be the only way to make the project work. He commented that if the Board added a condition about the sunset time, they would need to make sure the first variance for the 30' was approved for the first phase of construction, however the other has a five year expiration or whatever the Board decides.

Board Member Pfannkuch asked how long the site plan was approved for. Mr. Portz responded that its good for two years, adding that variances expire after one year. Board Member Pfannkuch also asked whether the Board could tie it to the site plan.

Chairman Blaser questioned if the second phase of construction is six or seven years out, would the City still have enforcement. Mr. Portz responded that they would as long as the variance is tied to this specific site plan.

Board Member Celsi asked whether there were any repercussions for a dangling variance. Mr. Portz responded that he didn't think so. As long as the variance was tied to the site plan, another owner wouldn't have the same approval if the property were to be purchased by someone else for a different development of the property.

Chairman Blaser asked if the resolution were approved, would staff make that tie back to the site plan. Mr. Portz responded that there exists a condition of approval that ties it back to this site plan. This condition was then read aloud by Board Member Cunningham.

Chairman Blaser then asked whether there was a hardship creating a need for the variance, such as information that came to light after the purchase of the property, which wasn't readily apparent. Mr. Portz responded that the petroleum pipeline company is very restrictive about what can be built over their easement, and this was not known at the time. He added that there is a new owner of the pipeline that has much stricter requirements than the previous owner.

Chairman Blaser then clarified that because of the pipeline issues and that particular company, the decision was made to move the project further to the east. Mr. Portz affirmed that it was.

Chairman Blaser asked if there was anything else to add regarding the hardship. Ms. Gagne responded that the pipeline restrictions have been the key thing; noting that it does take time and diligence to become aware of all that is involved. She stated that they were aware of some of it at time of purchase, but noted that the requirements are very complex. The pipeline has become more aggressive in regulating what they can do on this property. The Refuge was trying to avoid a legal battle with the pipeline company, and decided it was simpler to request a variance and not have to dig something up.

Board Member Christiansen noted that the applicant was shifting the structure toward a utility substation and not toward a residential property.

Chairman Blaser added that the neighboring owner is supportive.

There being no other questions or comments, Chairman Blaser asked for a motion and a second for the item.

Board Member Celsi moved for approval. Board Member Cunningham amended the motion to including Findings in Attachment E, then seconded the motion. Board Member Celsi affirmed the amended motion. The Board of Adjustment adopted the resolution to approve the Variance to allow the setback variance for Furry Friends Refuge, subject to meeting all City Code requirements, regulations, and the following:

1. The Board of Adjustment authorizing that the variance necessary for construction of the phase two building addition remain valid until such time that construction of phase two is initiated. The variance shall only apply to construction as indicated on the 2017 Site Plan application. Any alteration from that illustrated in the site plan as approved by the West Des Moines City Council will require specific Board of Adjustment approval prior to release of the associated building permit for phase two construction.

VARIANCE APPLICATION FINDINGS

- 1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable sub-area plan.

The proposed use of the property as an animal shelter is consistent with the West Des Moines Comprehensive Plan in that the land use of the property is designated Support Commercial on the Comprehensive Plan Land Use Map. An animal shelter is an appropriate use in the Support Commercial land use designation and has previously been approved as an appropriate land use by the Board of Adjustment.

- 2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones.

The property is an irregularly shaped lot that is narrow and the western edge and larger at the eastern edge. Due to the existence of utility easements on the north side of the lot and the west side of the lot, the only place to locate the building is on the far eastern edge. In addition, on the east side of the lot there is a "jog" in the lot line that also impedes where the building can be located. And there is a 60' landscape buffer requirement along Mills Civic Parkway that also limits building location on the site.

- 3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest.

If the 50' side yard setback were applied to this property, the building could not be built as proposed and possibly not at all due to the irregular shape of the lot, parking requirements and the existence of the utility easements on the north and west side of the lot. The hardships associated with this lot are not self-imposed by the applicant.

- 4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment.

There have been no changes in the character of this site or its surroundings that will detrimentally affect the environment.

- 5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

The granting of this setback variance will not adversely affect the health, safety or welfare of the public. The property to the east will not be negatively impacted by the granting of this variance. Due to the location and "jog" of the shared property line at this location, there will not likely be any development on this portion of the adjacent property at any time in the future and therefore there will be no detrimental impacts because of the closer location of the proposed animal shelter building. Because of the "jog" in the eastern property line, the reduced setback will not even be noticeable to the general public.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
 Motion carried.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

Item 6 – Adjournment

Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Pfannkuch, seconded by Board Member Cunningham, the Board of Adjustment meeting adjourned.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch..... Yes
Motion carried.

The meeting adjourned at 5:57 p.m.

Michael R. Blaser, Chairperson
Board of Adjustment

Jennifer Canaday, Recording Secretary