

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_06-27-2018

Chairperson Cunningham called to order the June 27, 2018, 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 June 13, 2018

Moved by Chairperson Cunningham; seconded by Board Member Christiansen, to approve the June 13, 2018 meeting minutes, with one correction. Page 4, Item 6, motion made by Christiansen.

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

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – Sign Variance – Ross Dress for Less, 4100 University Avenue, Suite 125 – A variance of the total amount of allowed tenant building signage from 240 sf to 371 sf (a 131 sf variance) – Ross Dress for Less - VAR-003913-2018

Chairperson Cunningham 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 June 11, 2018, in the Des Moines Register.

Chairperson Cunningham 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 Celsi, 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.

John McCall, ABC Sign & Display, 3300 101st St, Urbandale, provided details regarding square footage of the existing four signs located at 4100 University for Ross Dress for Less. He requested an additional 131sf for the primary sign located on the west elevation over the business front door. He noted that it was difficult to see the two smaller signs based on their locations and the distance from the street. Mr. McCall also noted that the size of the letters on the primary sign made visibility a problem to drivers at the street.

Board Member Christiansen asked if the applicant had reviewed and was in agreement with staff comments. Mr. McCall affirmed that he had reviewed them, and would allow Administrator Wilde to respond to the agreement.

Chair Cunningham clarified that applicant is entitled to 240sf under current sign ordinance but is requesting to use a total of 371sf. Mr. McCall affirmed that was the request. Chair Cunningham asked the size of the sign on the back of the building. Mr. McCall stated it is 64sf. Chair Cunningham informed that the Board has to make

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findings in accordance with the zoning ordinance, and to grant a variance, the board would have to find special circumstances which make it unfair to enforce the ordinance as written, or that results in some unnecessary hardship which is not of the tenant's doing. He asked if the applicant could demonstrate where these criteria might be met.

Board Member Christiansen inserted that the Board was asking the applicant to help find basis for approval. He noted that in the past the Board had denied Dick's Sporting Goods and Dillards for similar requests.

Mr. McCall suggested that the Board could consider subtracting the smaller signs from the overall square footage allowed as they were not as visible from the street, therefore not as much of an attraction. The east elevation sign faces a parking lot to the business behind it.

Board Member Christiansen observed that the east elevation sign is visible to those driving into Home Depot's parking lot.

Board Member Pfannkuch noted that the largest sign by itself is still 50sf over the maximum allowed.

As there were no comments or questions from the audience, Chairperson Cunningham closed the public hearing and asked for staff comments.

Kevin Wilde, Development Services Sign and Zoning Administrator explained that the City sign ordinance is calculated based on the size of the frontage space facing a public street and the distance from the street. If the business is greater than 500 feet back, they are allowed a multiplier of 2. The City does not dictate how the allowed square footage is divided between signs. Using the backside of the building is at the owner's discretion; they are the only tenant in that center choosing to place a sign in the rear. Staff does not see a need to deviate from the approved ordinance for an exception from what everyone else has done. There will be another tenant back in the corner of this site who will have less frontage. Granting this variance will likely lead to a request for another from the next tenant. The landlord didn't include the wall area on the east side of the building that is part of the sign variance request in a minor modification application for the architecture. If the Board approves the variance, he will then be obligated to submit a minor modification for the changes in the back.

Administrator Wilde agreed that drivers can't see the signs from the street going west on University. Along University going east, there are open areas drivers can see through to the sign. Based on industry standards, at 1,000 ft, one would still be able to see some of the Ross signage. If a driver turns left on 42nd Street, visibility increases. Administrator Wilde added that a monument sign at the street will include a sign panel listing Ross as a tenant of the center, and this will increase visibility at the street level on University Avenue. Once a driver turns into the parking lot area, they will be able to see the smaller signs directing them to the business. Regarding the size of the letters, Administrator Wilde affirmed that at 1,000 feet, a 43 inch letter is visible. The business is located at 895 feet from the furthest street, with 72 and 42 inch letters. Staff believes this does not create an issue of visibility to drivers. There are similar situations all over the City where there exist L-shaped shopping centers. Staff does not feel the applicant has justification for the additional signage.

Board Member Pfannkuch asked if the the monument sign counts as part of the total square footage. Administrator Wilde replied that it did not.

Board Member Blaser noted the applicant submitted that Best Buy and Whole Foods have additional signage that Ross does not, and asked if they were out of compliance. Administrator Wilde responded that Whole Foods has two wall frontages, and thereby earns more signage because they have more footage. Best Buy had a panel sign variance approved, but the panel sign is inset into the wall face. When the store size decreased the existing sign size was grandfathered in rather than force the owner to rebuild the wall in order to replace the sign.

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Board Member Blaser stated that historically, the Board has taken a strong stance against approving sign variances without demonstrated hardship. Board Member Pfannkuch noted that there are many shopping centers all over the City and that the Board would not wish to set a precedence.

Chairperson Cunningham asked for a motion and a second for this item.

Moved by Board Member Blaser, seconded by Board Member Pfannkuch, the Board of Adjustment adopted a resolution to deny the Variance.

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

Item 3b - Backyard Chickens, 1521 Thornwood Road – Permitted Conditional Use Permit to allow the keeping of 14 chickens – Chris and Molly Fry – PC-003945-2018

Chairperson Cunningham 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 June 15, 2018, in the Des Moines Register.

Chairperson Cunningham 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.

Chris and Molly Fry, 1521 Thornwood Road, stated had brought the chickens with them when moving from California. Ms. Fry noted that she had grown up in Norwalk. While living in California, there was a local trend to keep chickens, and a friend gifted them with baby chicks. When moving back to Iowa, they brought 5 chickens with them, not realizing they needed a conditional use permit. Their home sits on an acre. Currently, they own 2 of original chickens and have added to their flock. They built a nice coop and a run; it is cleaned every week, bagged and removed by Waste Management. It does not smell. They spray it a couple times a year to keep bugs out; it is cleaned weekly, major cleaning several times a year.

Chairman Cunningham asked if the Fry's agreed with staff comments. They affirmed that they agree. Chair Cunningham added, that but ultimately the Fry's would only be allowed to have a maximum of 6 chickens. Mr. and Mrs. Fry agreed, noting that chickens only live about 6 years, and several are getting older.

Board Member Blaser asked the applicant, if the Board decided to include some range variations based on circumstances; would ten be a better number? Mrs. Fry agreed that she would rather have ten; adding that it's more reasonable – we eat a lot of eggs. When they have five chickens in California, they went through the eggs pretty fast.

Chairperson Cunningham then asked for questions or comments from the audience. Hearing none, Chairperson Cunningham closed the public hearing and asked for staff comments.

Brad Munford, Development Services Planner, summarized that the applicant has 14 chickens which they are requesting to keep on their 1 acre property. He informed that Staff did end up having 3 letters from neighbors, all in support. One gentleman mentioned a concern. Mr. Norwood asked about unforeseen circumstances in the future,

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and how would we deal with this. He suggested a 2-5 year time period. The applicant would have to come back and request a conditional use permit again. Mr. Norwood noted manure and number of animals as potential concerns. Historically the City hasn't placed this sort of restriction on a use permit because the City has Code Enforcement officials who would deal with this, with authority to revoke the permitted conditional use. Mr. Munford believes this is a practice that works best for our community. He stated that 14 chickens seemed a bit much to staff, but staff did research while examining the animal ordinance. The University of New Hampshire Cooperative Extension created a guideline on how to keep that line between those who want to keep animals and those who don't. This matrix recommends a maximum of 6 chickens for 1 single family dwelling. Its not accepted yet as a revision of the code, but something Staff is working toward. Based on acreage, Staff would consider 10, but given the credentials of the party creating the report, that's what Staff feels comfortable recommending. He added that the application does not conflict with the comprehensive plan, general health and welfare, infrastructure requirements, and it fits the scale of the surrounding neighborhood. The application was distributed to neighbors and other City departments, and Staff didn't feel there would be any issues arising from approving the use. The applicant is willing to meet the five stipulations as listed.

Board Member Christiansen asked if keeping chickens is only allowed in Residential Estate zones. Planner Munford added that it is also allowed in open district areas. Board Member Christiansen asked what was allowed for horses in the same zoning areas. Planner Munford explained that it depends on what is appropriate. The application would need to meet the 1 acre standard. Staff are researching the animal code to update it.

Board Member Pfannkuch asked if the allowable number of animals would be a set amount, or include a range. Planner Munford stated either would be an option, it hasn't been determined yet. Board Member Pfannkuch added that if there were a compliant, Code Enforcement would address it. Planner Munford affirmed this would be the case.

Board Member Blaser stated he had read the information provided, including the New Hampshire report, and proposed that Staff include some flexibility to address situations individually. He recommended increasing the number of chickens in particular, maybe 6 per family member. He added that he felt 6 is fairly restrictive given the number of other animals they could have. He concluded that he would support an increase to maybe 9 or 10, but not 14.

Chairperson Cunningham asked for a motion and a second for this item.

Moved by Board Member Blaser, seconded by Board Member Pfannkuch, the Board of Adjustment adopted a resolution to approve the conditional use permit to allow ten chickens, subject to meeting all City Code requirements, regulations, and the following:

Conditions of Approval

1. The applicant acknowledging in writing that no additional chickens over the current 14 can be added and should something happen to any of the chickens, they may not be replaced until such time that only 10 chickens remain on the property.
2. No roosters shall be kept on the property.
3. The chicken coop and the yard must be cleaned and the waste must be disposed of weekly to avoid odor problems.
4. The applicant agrees to remove the temporary snow fence from around the coop and replace it with fencing material that complies with the zoning ordinance (Section 9-14-11) within 6 months.
5. Commercial operations that sell any products from the chickens, including breeding are not allowed.

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

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Motion carried.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

The next Board of Adjustment meeting will be held on Wednesday, July 11, 2018. Map attached regarding restricted parking area during the next meeting due to event at Valley Stadium.

Item 6 – Adjournment

Chairperson Cunningham asked for a motion to adjourn the meeting.

Moved by Board Member Blaser, seconded by Board Member Christiansen, the Board of Adjustment meeting adjourned.

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

The meeting adjourned at 6:12 p.m.

Thomas M. Cunningham, Chairperson
Board of Adjustment

Recording Secretary