

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_10-03-2018

Chairperson Cunningham called to order the October 3, 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 September 19, 2018

Moved by Board Member Blaser; seconded by Board Member Pfannkuch, to approve the September 19, 2018 meeting minutes.

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 – Neifert Variance, 3900 - 3928 High Street – Vary the front yard setback for an accessory structure from 30 feet to 5 feet for the construction of a 720 square foot detached garage – Roger Neifert (VAR-004055-2018)

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 September 21, 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.

Roger Neifert, 3900-3928 High Street, West Des Moines, stated that he is proposing to build a garage on the lot 3928 High Street, and that he lives at 3900 High Street. He has the lots tied together. Mr. Neifert provided a sketch of the location and terrain, noting that the site is located over old coal mines. He concluded that due to the terrain, if he located the garage on any other portion of the lot it wouldn't be accessible.

Board Member Celsi asked for clarification regarding the location of the property, and was responded to by other Board Members and staff.

Board Member Christiansen questioned whether the applicant is in agreement with staff's one condition. Mr. Neifert affirmed that he is.

Board Member Blaser asked when Mr. Neifert purchased the property. Mr. Neifert indicated that he bought 3900

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High Street in 1986 and purchased 3928 High Street in 1999.

Chairperson Cunningham then asked for any other questions or comments from the audience. As there were no other questions or comments, Chairperson Cunningham closed the public hearing and asked for staff's presentation.

Brad Munford, Development Services Planner, summarized the staff report. Mr. Neifert is asking for a 25 foot front yard variance of a setback which is required by code to be 30 feet. Topography is the biggest issue. Staff determined that the application is consistent with the Comprehensive Plan. Staff believe there are special circumstances for building on this property, as lots along the Raccoon River Commerce Neighborhood provide topographical challenges. Mr. Munford pointed out that if the garage were set back 30 feet, Mr. Neifert would have to build a fairly substantial foundation. He provided a photo showing the sloping of the site. There is a 20 foot grade change from front to back. This is an exceptional characteristic and creates some unique code compliance issues not found on other lots in our city. It would arguably be tough to build a 20 foot foundation for a garage. The applicant hasn't created a self-imposed hardship. There have been no changes to the property that would detrimentally affect the environment. Mr. Munford concluded that approving the variance will not create adverse effects to others.

Board Member Pfannkuch questioned whether Commerce was part of West Des Moines in 1999. Mr. Munford affirmed that it was.

Chairman Cunningham questioned whether it was in 1986, when Mr. Neifert purchased the lot, and if the 30 foot setback existed at that time. Mr. Munford stated that he believed that it was. The house was built in 1925 and is believed to have been in existence prior to annexation in the 1930s.

Board Member Blaser specified, the question was whether that area was in the City at the time the home was purchased. Mr. Munford affirmed that it was.

Board Member Blaser commented that he felt the standards for variances have changed, citing an example of one which was not allowed. He noted that he would like it memorialized if the standards of variances have changed, adding that the Board has been pretty tough on approving variances in the past. Board Member Christiansen concurred.

Development Coordinator Linda Schemmel responded to the Board regarding the question of variance standards loosening up from previous findings. Regarding the current variance, she stated that she felt it was extremely difficult to construct any structure on High Street, considering the physical condition of the site. Planner Munford inserted that the findings specifically mention topography and Staff felt this met that standard.

Board Member Christiansen clarified that Staff were not loosening the standards, but found findings specific to this instance. Coordinator Schemmel affirmed that and added that this was a hardship the applicant didn't create; to build any sort of structure on this lot would be difficult. In that neighborhood, all of the existing structures are pushed right up close to the road. The right of way line is very close to the existing structures but the gravel drive is closer to the north side of the right of way, so it gives a skewed perspective of how the house is placed on the site.

Board Member Christiansen asked if the owner is making concession to build further away from the road. Ms. Schemmel noted that Mr. Neifert's house is a foot or two off of the property line. The actual High Street gravel is probably 20 feet away from the property line. It gives the impression that the houses are meeting setbacks when they're not.

Board Member Blaser reiterated that Staff is saying there is not a loosening of the standards, because the standard includes special circumstances applicable to the topography in this case, and that unique topography is not

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generally applicable to other similar homes in the area, therefore it satisfies that requirement. Ms. Schemmel stated that it does for that particular finding.

Chairman Cunningham noted that addressing the unique topography, to build at the 30 foot setback would require a 25 foot block of concrete on the hill to build there. Mr. Munford stated that previous precedent is being taken into consideration; this case is a little clearer; that precedent has not been lost.

Board Member Pfannkuch commented that there has been a question in the past for regarding variance classifications, major versus minor; and whether is it a consent item. There is a different process used in other jurisdictions which takes the guessing out of it.

Chairman Cunningham stated that they needed to be consistent as a board, and that the standard doesn't change just because members of the board change.

Ms. Schemmel informed that Board that Staff had some preliminary discussions with the City attorney's office regarding the minor versus major categorizing of variances, and noted that looking at state law gives the City attorney some concerns regarding using major and minor because the approval process has to be the same. Staff is working on revising bulk regulations with a history of variances, such as residential estate zoning to allow accessory structures under 1000sf to have the same setbacks as lots with other residential zoning, under the premise that setbacks are intended to mitigate impacts such as building mass. Board Member Pfannkuch agreed that bulk regulations need to change as infill and development continues. Ms. Schemmel concluded that this revision of bulk regulations is being finished and will go before Council for approval. Regarding the variance approval process, Staff will continue to research it but right now the City attorney is reluctant to say this is a direction we should go.

Board Member Blaser questioned whether Staff viewed a distinction between people who just bought a piece of property, or those who bought it long ago and now want a garage. He cited an example of a variance request where the owner wanted to save the trees and the developer sold him eleven feet of additional property as the Board was considering denying the variance. Ms. Schemmel responded that Staff work with applicants to explore other options, trying to mitigate cases that would come to the Board by helping the owners explore other opportunities.

Board Member Blaser questioned again whether Staff consider a difference between someone who had owned the property for 30 years, or just bought it. Ms. Schemmel responded that Staff do not, pointing out that the majority of people who buy property don't look into setbacks and easements. But with topography, it's pretty obvious to a potential owner. She concluded that she believed this case was different than recent requests, questioning how else Mr. Neifert could accomplish building on it.

Board Member Christiansen stated that he believed it would look terrible to build the cinderblock basement; he stated that he liked the fact that Mr. Neifert was bringing it here to the Board.

Board Member Pfannkuch noted that a big built structure might affect the water runoff for the neighbors. Ms. Schemmel said it might possibly do so, the area is just difficult to build in.

Moved by Board Member Pfannkuch, seconded by Board Member Celsi, the Board of Adjustment adopted a resolution to approve the Variance based on Staff Findings in Exhibit E to allow the setback to be reduced, subject to meeting all City Code requirements, regulations, and the following:

1. The applicant acknowledging that the approval of the variance is conditioned upon the garage door not facing the street and that at least 20' of pavement must be in front of the garage door to accommodate a parked car.

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Vote: Celsi, Christiansen, Cunningham, Pfannkuch..... Yes
Blaser.....Abstain (No)
Motion carried.

Per the Board of Adjustment Rules of Procedure, any member of the Board of Adjustment who has not declared a conflict of interest, but casts a pass vote or abstains from voting shall have that vote registered as a no vote. Board Member Blaser did not declare a conflict of interest prior to voting "abstain", thus his vote is registered as a no vote.

Board Member Blaser commented on his abstention, voicing concern that different standards are being applied in the past year to variance applications. Board Member Christiansen agreed with him, as did Chairman Cunningham, who concluded that he felt Staff made the case here.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

There were no Staff Reports. There is one tentative agenda item for the next scheduled meeting on October 17, 2018.

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 5:55 p.m.

Thomas M. Cunningham, Chairperson
Board of Adjustment

Recording Secretary