

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_09-04-2019

Chairperson Pfannkuch called to order the September 4, 2019, 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, Christiansen, Cunningham, Pfannkuch.....Present
StevensAbsent

Item 1 – Consent Agenda

Item 1a – Minutes of August 21, 2019

Chairperson Pfannkuch asked for any questions or modifications to the meeting minutes of August 21, 2019.

Moved by Board member Blaser, seconded by Board member Christiansen, the August 21, 2019 meeting minutes were approved as presented.

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

Motion carried.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a –Gordon Variance, 206 5th Street – Vary the maximum allowable fence height from 6 feet (6’) to 10 feet (10’) for the construction of a security fence – Betty Gordon – VAR-004456-2019

Chairperson Pfannkuch opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on August 26, 2019, in the Des Moines Register.

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

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

Motion carried.

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Betty Gordon, 206 5th Street, West Des Moines, is requesting a variance for a 10 ft. high fence due to numerous children in the neighborhood using skateboards on the roof of her building. She indicated that her neighbor's property is also accessed by her stairway. If a six foot fence is allowed, and with a four foot dumpster, they would move the dumpster over to scale the fence and onto the roof. This has been an issue for many years. She and her neighbor both recently had new roofs placed on their buildings. Juveniles have set fires on the roofs and women have gone up to the roof to socialize with friends. Law enforcement has been called many times over the years but she understands that it is really her issue and needs to place something around the staircase to resolve the problem.

Board member Christiansen raised questions regarding the location of the dumpster, if the door would be blocked, and if the neighbors were aware of her proposed fence. Ms. Gordon replied that the dumpster would be placed outside the fence area, her neighbors are aware of her fence request, and that it would not block their door.

Board member Cunningham asked a question regarding why the dumpster wouldn't be enclosed in the fence area.

Ms. Gordon responded that that area is too large to enclose and that the sanitation engineer would need access to the dumpster.

Board member Cunningham Tom clarified with the applicant that the reason a six foot fence would not be feasible is because the dumpster is located outside the fence.

Ms. Gordon disagreed with Board member Cunningham stating that kids will still try to climb over a six foot fence with the dumpster inside the fence area but a 10 foot fence may prove more difficult.

Board member Cunningham raised questions regarding the staircase's existence, its use, and if there was anything located there prior to the staircase. Ms. Gordon replied that the staircase is used as a fire escape and she installed it in 1996 or 1997 but that there wasn't anything there prior to the staircase, including a fire escape. The space upstairs was vacant when she moved into her current space. She concluded that a typical staircase would jut out further into the street, which is when they decided that the spiral staircase would work better than a fence.

Board member Cunningham then inquired as to the frequency of people on the roof. Ms. Gordon answered that people frequent the roof at a minimum of 3 times a week; more often during the summer months.

Board member Cunningham raised additional questions regarding the direction of the spiral staircase faces, if a gate existed, who uses it, and if other staircases exist in Valley Junction.

Ms. Gordon responded that it faces the alley and that kids will go up to the roof and paint slogans on the buildings and break lights. There is a gate but that does not deter them from climbing up to the roof; nor does the "No Trespassing" sign or the security cameras that are in place. Her thought was to increase the height of the gate but it needs to be enclosed to stop them from climbing over. She continued that a conventional fire escape that folds is not typical

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in the Valley Junction area. She concluded that she is not sure why a spiral staircase was allowed but that it has been there for many years.

Board member Cunningham asked who had given permission for the spiral staircase, to which Ms. Gordon answered that she did not know gave the permission.

Board member Cunningham then asked if an eight foot fence would be more sufficient than a 10 foot fence. Ms. Gordon replied that an eight foot fence would still enable them to climb up on the dumpster because there's less height to navigate.

Board member Christiansen asked the type of material the fence would be constructed of.

Brad Munford, Development Services Planner, briefly noted that the material of the fence is not a part of the application and that they are only dealing with the bulk standards. They would need to go through the Minor Modification process for approval of the material.

Board member Christiansen added that as a business owner, they are eligible to obtain a joint dumpster in the alley way and that it might assist with her fence issue. Ms. Gordon noted that it is her understanding through her neighbor that a community dumpster is more expensive to have.

Linda Schemmel, Development Services Coordinator, explained that the staircase addition itself would be reviewed by the Building Department but that this level of addition would not need to go through Plan & Zoning or City Council since it could be approved at staff level. A stairway is allowed in the commercial district.

Board member Cunningham then clarified if a spiral staircase would have to have been approved at least at the staff level.

Ms. Schemmel answered that it would not need to be approved by the Plan & Zoning Commission, City Council, or Board of Adjustment but would need to be approved at the Minor Modification level. The Building Division would review it for consistency with the Building Code.

Board member Cunningham clarified if the top level is occupied, should there be a fire escape.

Ms. Schemmel noted that if there are certain occupancies on the upper level, there needs to be two means to exit the building.

Ms. Gordon added that it was a residential use initially and then she requested it be rezoned to a commercial use, which it is now.

Board member Cunningham asked if this Board would have approved that rezoning request.

Board member Christiansen noted that the zoning is Valley Junction Historical Business and that there can be office on the lower level and residential or office on the upper level.

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Tom Jordison, Cedar Hill Properties, 2404 Walnut Trail, St. Charles, Iowa, commented that he is just to the north of Ms. Gordon and that his roof is fairly new. Skateboarding occurs on his roof as well and that people up on the roof are a regular occurrence. Christmas lights have been broken and skateboards and other debris have been found on the roof as well. He concluded that he is in support of Ms. Gordon's proposed variance request for a 10 foot fence.

Board member Cunningham indicated that although aesthetics are not a part of this approval he is curious regarding the fence materials the applicant is considering should the variance request be approved.

Mr. Munford described the fence as roll metal type (roll steel) with a small diamond shaped pattern that will be aesthetically pleasing, opaque in color, and is similar to what patio chairs have been constructed of.

Board member Cunningham asked if a gate or door for the driveway would be considered.

Ms. Gordon replied that the gate or door would be constructed of the same material and would have a panic bar on the inside but be locked from the outside, per the City's Fire Code.

Chairperson Pfannkuch asked if anyone from the audience wished to speak. Seeing none, closed the public hearing and asked for Staff's comments.

Brad Munford, Development Services Planner, explained that this was a difficult case to review and that staff struggled with the need to keep people from entering the roof area. A counter argument is that having additional fence height would deter more people from accessing the roof. City code allows six foot fences in a commercial district, eight feet in residential estate districts (for large animals), and 12 feet for warehouse retail districts. The proposal will need to go through a Minor Modification process for the aesthetic of the fence. A condition has been placed on this proposed request for the applicant to complete the Minor Modification process for approval of the aesthetics of the fence.

Mr. Munford reviewed the following factors to be considered for approval of a variance request:

Factor #1 – The use of the property is commercial with commercial and/or residential or office use on the second level is allowed by Code and fits the comprehensive plan and zoning district guidelines.

Factor #2 – Staff made the assumption that it was constructed as a live/work unit but typical exterior fire escapes are not common. There are other types of exterior fire escapes that could be used in lieu of this particular one, and in using this one, could it be considered an 'attractive nuisance'. There is also the valid concern with people on the roof, specifically when fires are being set and breaking and entering occurs.

Factor #3 – City Code allows for a six foot fence for privacy use, which the applicant is trying to do. From staff's standpoint, City Code does not grant authority for a fence higher than six feet.

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Factor #4 – Staff does not see any changes that would detrimentally impact the environment although argument could be made that access to the roofs could impact the buildings.

Factor #5 – The granting of a variance in the limited area could deter trespassers from climbing the dumpster and up on the roof.

In conclusion, Mr. Munford did note that staff does have concern with setting a precedent for a 10 foot fence.

Chairperson Pfannkuch inquired if there was discussion regarding changing the type of staircase or will they use what currently exists.

Mr. Munford responded that the applicant is adamant in her decision to have a 10 foot fence it was not discussed specifically regarding removing the existing staircase even though there are other options available for fire escapes.

Board member Cunningham expressed concern with the City allowing a spiral staircase. If a standard fire escape were there, it would not necessarily prevent someone from scaling the fence. He noted concern with the dumpster and the reason why a six foot fence would not be feasible. He concluded by asking if the 10 foot fence was the tenant's request.

Mr. Munford commented that it is the tenant's idea for a 10 foot fence. The dumpster is typically located between the staircase and the post.

Board member Cunningham noted struggling with the reasoning why the dumpster cannot be located inside a six foot fence and why it wouldn't address the issue.

Mr. Munford commented that it is the preference of the applicant to not have the dumpster within the enclosure and it is a standard throughout the community to have dumpsters inside the enclosures.

Board member Blaser added that if you place an enclosures that abuts a fence to hide the dumpster, the kids will climb the enclosures vs. the dumpster

Board member Cunningham restated his concern with why the dumpster isn't included inside the fenced area.

Mr. Munford clarified Board member Cunningham's concern with not having the dumpster and staircase both inside the fenced area.

Board member Christiansen clarified that Mr. Munford was referencing a public use dumpster. He commented that in his opinion it is more of a barrier or wall, but not a fence.

Mr. Munford stated that City Code references fences and walls, but that they are not separate.

Board member Christiansen noted that the plausible answer is to have a public dumpster and it has the City block enclosure around it.

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Ms. Gordon added that the dumpster could be eliminated but a six or eight foot enclosure would not deter the kids from climbing over and scaling up to the roof, but that a 10 foot fence would be more difficult for them.

Board member Blaser commented that he feels this is more of a public safety issue and that there needs to be some sort of barrier located there. He indicated support for a 10 foot fence with possibly a ledge on top but does note concern with applying different standards for different variances and referenced the Houston variance as his reasoning.

Board member Cunningham agreed that it is a safety issue but noted disagreement with the City approving a spiral staircase. He concluded by stating that he is in support of the variance and that environmental standards are just as important as safety standards.

Chairperson Pfannkuch asked for continued discussion or a motion and a second for this item.

Moved by Board Member Cunningham, seconded by Board Member Blaser, the Board of Adjustment approve the variance request of a four foot variance to the maximum six foot fence height restriction for property located at 206 5th Street for purposes of building a security fence.

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

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

The Recording Secretary stated that the next Board of Adjustment meeting is scheduled for September 18, 2019.

Item 6 – Adjournment

Chairperson Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Blaser, seconded by Board Member Christiansen, the Board of Adjustment meeting adjourned at 6:15 p.m.

Angie Pfannkuch, Chairperson

Recording Secretary