

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
SEPTEMBER 8, 2011
5:00 P.M.**

Chairman Stelk called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Howe, Stelk, Voelliger
ABSENT: None
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of July 14, 2011.

On motion by Howe, seconded by Voelliger, that the minutes of the meeting of July 14, 2011 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 11-046; 3806 Rolling Hills Drive (R-2) - A request for a variance to allow a 6-foot high fence and a swimming pool in a required front yard, submitted by John Crump.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes. He stated that he had received one letter in opposition to the request and one in support of it.

Stelk asked if there was anyone present wishing to speak in favor of the request.

John Crump, the applicant, stated that there is not enough room behind his house for the pool which is 4 feet tall and has a 16-foot diameter. He indicated that it is an inexpensive pool which is taken down at the end of the season each year. Crump stated that he would like to move the pool to the front yard and build a deck around it,

adding that he would like to build a 3-season room where the pool is located now. He expressed concern about the effects of the Tanglefoot Lane construction that will take place in two years. He indicated that it is unlikely that the fence would begin at the front of the house. He stated that he has spent a considerable amount of money on the fencing that is already on the property.

Kelly Lyons, 3814 Rolling Hills Drive, stated that she has no objections to the request.

Charles Snyder, 1203 Pinehill Road, stated that applicants take good care of their home and expressed support for the request.

Michelle Crump, the applicant, stated that she and her husband have plans for the rear yard but are very limited by its size. She indicated that she wishes to have a fence in the front yard because she would like to start a family. She explained that she had been unaware of the plans for a bike path along Tanglefoot Lane until her husband applied for the variance and expressed concern about the increased pedestrian traffic.

Voelliger expressed concern about a 6-foot high fence being located so close to the sidewalk and asked for clarification about the required setback. Soenksen explained that the request is to place the fence on the property line which is typically located 1 foot behind the sidewalk.

Howe asked what would change when the bike path is installed during the Tanglefoot Lane construction and if the applicant would lose any additional right-of-way. Soenksen stated that there would be no changes to the applicant's property, adding that the path would be widened to 10 feet but that the extra width would be located south of the existing sidewalk.

Falk commented that the examples given in the staff report of properties for which variances had been granted for 6-foot high fences in front yards are decidedly different from the applicant's request. He added that none of them adjoin another neighbor's entry in the front yard. He asked if there is any precedent for allowing a 6-foot high fence and pool in a resident's practical front yard. Soenksen stated that he had been unable to find any examples of the Board approving a variance for a pool in a required front yard. He added that while the Board has granted variances for 6-foot high fences in front yards, the circumstances have typically been different. He indicated that he would be unable to state equivocally that a request similar to the applicant's has ever been granted. Falk reiterated that the examples given in the staff report were not relevant. Stelk concurred. Soenksen stated that none of the examples from the staff report were illustrations of 6-foot high fences on corner lots where the fence affects a neighbor's true front yard. Voelliger commented that none of the examples shown were of properties where a fence could impede the vision of a motorist exiting the driveway to a busy street.

Howe asked for clarification of the ordinance requirements with regard to pool size. Soenksen explained that a structure is considered to be a pool if it is 18 inches deep. He added that the only part of the ordinance that addresses pools is the rear yard section. Connors added that the ordinance requires a permit for pools with more than 18 inches of water.

Stelk asked for clarification regarding the fencing requirements for pools. Connors explained that the building code requires a 4-foot high fence with a lockable gate for a pool. Soenksen added that 4-foot high fences are allowed in the front yards on corner lots.

Howe commented that while the configuration of the lot and the grade change from the adjacent lot pose a challenge for the applicants, they should have been aware of those constraints before the home was purchased. He stated that he is opposed to allowing 6-foot high fences in front yards on the property line as it has the appearance of a barrier and is not visually attractive to him. Howe expressed concern about the negative precedent that would be set if the fence request is granted. He indicated a willingness to allow a 6-foot high fence set back 10 feet from the property line. Voelliger stated that he would want the fence to be placed a minimum of 4-5 feet from the sidewalk.

Falk asked if staff had given any consideration to the impact of a 6-foot high fence on traffic safety. Soenksen explained that the ordinance prohibits any intrusion into the required 35-foot vision triangle, adding that the proposed fence would be compliant.

John Crump stated that a 6-foot high fences in a front yard on the property line was approved in July 2010 at 3493 Adele Lane and at 3498 Fieldsike Drive in April 2011. He commented that he had paid to have a Mediacom cable buried so as not to interfere with the pool. He indicated that there is a MidAmerican Energy power line running to his home that restricts him from placing the pool further north on the property. Crump indicated that he would have been willing to move the pool closer to the garage, but that he had been informed that a pool must be a certain distance from the foundation.

Howe asked if there is room for the pool in the proposed location if the fence is placed 10 feet from the property line. Crump stated that there is a tree that would make the suggestion infeasible.

Voelliger asked if the applicant would be amenable to moving the fence 4-5 feet from the property line. Crump stated that he does not want to interfere with the fire hydrant on the property.

Howe asked for clarification of the distance of the house from the property line. Soenksen stated that he would approximate the distance as 25 feet. Crump stated that initially he had proposed to place the pool further to the west but that staff had explained that it would not allow for the required setback between the pool and the neighboring property line. He indicated that his intention is to place the fence approximately 2 feet from the property line along Tanglefoot Lane.

Howe asked if the existing fence section on the south side would remain in place. Crump stated that it would not, adding that the reason for the proposed variance is to enlarge his yard. He reiterated that he plans to build a small addition on the rear of the house and a deck around the pool. Howe asked if the applicant would have a permanent, year round pool if he installs a deck. Crump stated that the pool would still be temporary and be taken down every year. He indicated that in the future he may

decide he does not want to have a pool at all, but would still have the deck. He stated that he would like to attach the deck to the 3-season room addition that he may build in the future.

Howe stated that he is opposed to the request as proposed but would be willing to try to make a compromise such as installing the fence 10 feet from the property line. Crump stated that there are other 6-foot high fences in the city that are on the property line. Voelliger reiterated that the properties to which the applicant is referring do not have driveways adjacent to the fence which could pose a hazard to motorists backing up into a busy street such as Tanglefoot Lane.

Howe concurred with Falk's comment regarding the fact that there are no other examples of this type of proposed configuration on a corner lot. He expressed concern about the precedent that could be set by the Board's final decision.

Crump stated that in his opinion any objections of the adjacent neighbor to the west would have been expressed in a letter or by attending the public hearing. Voelliger commented that even if the current neighbor does not object, a future owner may.

Falk suggested that a site visit be scheduled in light of the many different alternatives that have been discussed with regard to the request. He indicated that a visit to the site would allow a clear demonstration of the proposed fence location in real terms.

Howe asked if the other Board members would accept a compromise involving placement of the fence at least 6 feet from the property line and allowing the pool to be located in the fenced area. Crump asked if the Board could compromise by allowing him to place the fence 4 feet from the sidewalk. He explained that he would like to landscape the area outside the fence but does not want to plant grass, adding that he would prefer to have a flower bed.

Stelk concurred with Falk regarding the necessity for visiting the site and discussing the many different configurations that have been suggested. Falk stated that he cannot vote in favor of such an ambiguous request about which there are many unknowns. He indicated that visiting the site will allow the Board members to see the precise location of the property line, the tree, the proposed pool and fence, and the fire hydrant in relation to the house. Stelk and Voelliger concurred.

Howe asked if the other Board members would be willing to approve the request at the public hearing meeting if the applicants were willing to place the fence 10 feet from the property line. Crump stated that he does not believe that the pool would fit if the fence placement is restricted to 10 feet from the property line. Voelliger suggested that perhaps staff could visit the site and make some measurements, investigate some alternatives, and defer the case until the next meeting.

Stelk explained that in the past it had been standard practice for the Board to have a site visit for all requests. He stated that he believes that this case warrants such a visit. Falk concurred.

Howe asked if there is any latitude in the ordinance which would allow the applicant to place the fence 10 feet from the property line and be code-compliant. Soenksen stated that this is not the case, adding that the Board has given exceptions in the past for properties with different configurations. He added that two of the variance requests for fences cited by the applicant along Devils Glen Road are actually placed between 10-15 feet from the property line. He indicated that in both of those cases additional landscaping and berming were utilized to minimize the intrusion. Falk reiterated that none of those cases were for corner lots but involved through lots and did not affect another neighbor's front yard or driveway.

Stelk stated that he would prefer to visit the site so that Board members have a more accurate indication of the exact proposed location of the fence and pool. Falk concurred. Voelliger commented that he is in favor of residents being allowed to utilize their property in the manner to which they see fit but is opposed to that use interfering with a neighbor's enjoyment of their property and possibly imposing a traffic and safety hazard.

On motion by Voelliger, seconded by Falk, that a variance to allow a 6-foot high fence and a swimming pool in a required front yard be deferred to a field visit meeting.

ALL AYES

Motion carried.

Soenksen stated that he would contact Board members during the next week to determine the date of the field visit.

- b. Case 11-047; 906 Tenplus Street (R-2) - A request for a variance to allow a swimming pool in a required front yard within 20 feet of the property line, submitted by Troy Broderick.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #4 to these minutes.

Stelk asked if the pool is aboveground or inground. Soenksen explained that the pool is an aboveground style but indicated that the applicant excavated the property so the majority of the pool appears to be at ground level.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Troy Broderick, the applicant, stated that when the house was originally constructed, Tenplus Street had not been built. He indicated that according to the US Postal Service, his address is actually 906 - 28 ½ Street. Broderick explained that for all practical purposes, his rear yard is adjacent to Tenplus Street. He indicated that Tenplus Street had not been extended until the two houses adjacent to his were built,

adding that at that time the designated front yard changed. Broderick stated that the pool grade is well below the 4-foot high privacy fence, adding that it would have no impact on the neighborhood.

Howe asked if the applicant had considered relocating the pool closer to the house. Broderick explained that a concrete pad for the pool has already been poured and indicated that he would like to build a deck from the patio to the pool.

Voelliger commented that Tenplus Street was at one time an alley, not an improved street.

Drew Irion, 815 - 28th Street, expressed support for the request.

Shirley Irion, 815 - 28th Street, stated that she is not opposed to the request. She indicated that residents who live on 28th Street and Tenplus Street actually use 28 ½ Street as their primary address. She explained that the pool will not affect anyone in a negative manner.

Falk asked for clarification regarding the required setback. Soenksen explained that because of the configuration of the neighborhood, the applicant is required to abide by the established setback rather than the traditional setback of 25 feet. He indicated that the entirety of the pool is in the required front yard not just a part of it.

Falk asked if the property directly to the east will ever be used for any kind of new development. Soenksen explained that the lot is not buildable because it is part of a drainageway and there is a significant dropoff on the property.

Howe commented that he is supportive of the request because of the unique nature of the neighborhood, the topography of the area, and the fact that the rear yards have been determined by the residents in a nontraditional way.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Howe, seconded by Voelliger, that a variance to allow a swimming pool in a required front yard within 20 feet of the property line be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #5 to these minutes.

- c. Case 11-048; 3832 Danbury Court (R-2) - A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Kaleb Evans.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #6 to these minutes. He indicated that he had received a letter from Rodey Tharp of 3841 Greenbrier Drive who had expressed opposition to the request as he had been under the impression that the fence was to be in the applicant's true front yard. He explained that once he had clarified to Tharp that the fence was proposed to be installed along Tanglefoot Lane, he withdrew his opposition.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Jara Evans, the applicant, stated that she had spoken to most of her neighbors who had expressed no objection. She indicated that because of the proposed Tanglefoot Lane reconstruction and bike path installation she believes the fence is necessary for the safety of her children.

James Elder, 3845 Danbury Court, expressed support for the request. He indicated that the staff report illustration states that he has a 6-foot high fence along Tanglefoot Lane. He explained that it is actually a 4-foot high chain link fence with a 3-foot area between the fence and the sidewalk that is planted with bushes. Elder indicated that while the bushes are aesthetically-pleasing, they collect a lot of garbage. He stated that 3 sides of his yard are enclosed with a 6-foot high wooden fence and would also like to install a 6-foot high fence along Tanglefoot Lane in line with the proposed one.

Evans stated that she would like to line up the proposed fence with the one adjacent to her property and plant a mulch bed with flowers similar to the neighbor's.

Howe asked how far the neighbor's fence is from the sidewalk. Evans stated that it is approximately 2 feet from the sidewalk. She stated that her rear yard is not very deep, adding that if the fence is required to be placed 10 feet from the sidewalk the usable rear yard will be substantially reduced.

Voelliger asked how far Elder's chain link fence is from the sidewalk. Elder explained that it is just a few feet from the sidewalk.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Howe reiterated that he is not in favor of allowing 6-foot high fences along sidewalks as it creates a barrier-like look. He indicated that he would be supportive of a fence located 10 feet from the property line. Stelk concurred, adding that there are 3 or 4 houses in the area that are through lots. He stated that most of the other homes along Tanglefoot Lane face toward that street. Howe stated that the Board has remained consistent with the requirement for 6-foot high fences to be located 10 feet from the property line, adding that if there were extenuating circumstances perhaps an exception could be made.

Voelliger stated that if the proposed fence is set back 10 feet, it would not be in line with the existing fence to the west. He commented that because Elder wishes to replace his fence, it could be lined up 10 feet from the property line as well. He added that if the property owner to the west replaces the existing fence at some future time, it could be set back 10 feet as well.

Falk commented that part of a pleasing aesthetic appearance has to do with continuity, adding that the established fence line plays a factor in his support of the request as presented. He stated that he would not be in favor of the proposed fence in a different area where such a precedent has not already been set. Howe stated that he believes that approving the request as presented would establish a precedent for homeowners along the entire length of Tanglefoot Lane. Soenksen stated that the Board has been consistent with regard to approving requests for 6-foot high fences on through lots. He added that he does not believe that this has had an effect on the outcome of other fence requests for front yards that do not involve through lots. Stelk and Voelliger concurred with Falk's preference for continuity.

On motion by Voelliger, seconded by Falk, that a variance to allow a 6-foot high fence in a required front yard be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Falk, Stelk, Voelliger
NAY: Howe

Motion carried.

Decision and Order is Annex #7 to these minutes.

- d. Case 11-049; 1315 - 18th Street (R-2) - A request for a variance to reduce the required rear yard setback from 25 feet to 22 feet to allow for construction of a screened porch, submitted by Tom Wells.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #8 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Voelliger asked if the adjacent neighbor had expressed any opinion with regard to the request. Tom Wells, the applicant, stated that he is not aware of any objections to the project. Soenksen stated that he not received any correspondence or phone calls concerning the case.

On motion by Howe, seconded by Voelliger, that a variance to reduce the required rear yard setback from 25 feet to 22 feet to allow for construction of a screened porch be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

- e. Case 11-054; 6001 State Street (I-2) - A request for a special use permit to allow a concrete recycling facility, submitted by Teresa and Glen Perkins.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #10 to these minutes.

Stelk asked if there are state regulations governing the proposed operation regarding noise and pollution. Bo Perkins, the applicant, confirmed this, adding that Tri-City Blacktop located near the proposed site conducts a very similar operation. He explained that Hawkeye Paving Corp. would bring the material to be recycled to the site to be processed, adding that later it would be used in other paving projects. He stated that Bettendorf allows this type of material to be used underneath streets as subbase. Perkins stated that a retaining wall would be built and landscaping installed to make the site more aesthetically-pleasing. He indicated that on the days the recycling equipment is operational it would typically run from 7:00 a.m. to 7:00 p.m. He added that the equipment could run from Monday through Saturday, but would not operate all of those days as the city restricts permission to work on road projects to certain days.

Howe asked how loud the proposed operation would be. Perkins explained that his business has been located adjacent to a similar operation and he has never been bothered by the noise. He reiterated that the equipment would not be operational every day, adding that the actual crushing would occur for 1-2 days each month at which time the machine would be relocated to another site. He indicated that there is not enough material to process to keep it running every day.

Howe asked if the city has received any noise complaints regarding the other business which conducts a similar activity. Connors stated that there have been no complaints.

Stelk asked if the machine would be enclosed inside a building. Perkins stated that it would be outside, adding that the machine is similar in size to an excavator and that the material is fed into it with an end loader. He stated that the material then exits the machine on a conveyor system and is placed into piles according to gradation size. Connors stated that when the buildings on State Street were demolished for the Waterfront Convention Center, the contractor operated a similar machine for

approximately two weeks in order to reduce the amount of waste that had to be hauled away from the site.

Voelliger commented that he believes that the proposed use will be an improvement as the applicant plans to make the site more aesthetically-pleasing. Stelk concurred.

Voelliger asked if the site extends to the Bee Line property. Soenksen stated that it does not.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Howe, seconded by Voelliger, that a special use permit to allow a concrete recycling facility be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #11 to these minutes.

- f. Case 11-055; 6175 Valley Drive (I-2) - A request for a special use permit to allow the residence of the proprietor on the premises of an industrial use, submitted by Kelly and Randy Beaston.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #12 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Randy Beaston, the applicant, explained that he and his family currently reside on the property, adding that he would like to reconfigure the interior of the existing building and also construct an addition. He indicated that after the reconfiguration, the living quarters would be in a different location and would have larger room sizes. He added that the reception area would be located where the living quarters are currently.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Voelliger, seconded by Howe, that a special use permit to allow the residence of the proprietor on the premises of an industrial use be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #13 to these minutes.

- g. Case 11-056; 3593 Middle Road (A-1) - A request for a special use permit to allow a wireless communication facility including a transmission tower for cellular phone use, submitted by AT&T Mobility.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #14 to these minutes. He stated that he had received a letter from Irvin Kaighin, 3644 Middle Road, who had requested that the tower be sited as far to the south on the site as possible and that it be fenced. He commented that it appears as though the proposed design will address Kaighin's concerns. Soenksen indicated that he does not know what type of fencing material will be used, adding that typically this type of tower is surrounded by chain link fence as it requires so little maintenance.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Steve Ward, consultant representing the applicant, reiterated that typically cell towers are surrounded by chain link fencing, adding that the code also requires a landscape screen. He added the while the current plan indicates a paved access road from the church, he plans to try to obtain an access easement through the former Eagle grocery store property which would eliminate the need for the paved driveway.

Howe asked how high fence would be and if there would be barbed wire on top of. Ward explained that the typical design calls for a 7-foot high fence with barbed wire, adding that if a city does not allow barbed wire an 8-foot high fence will be installed instead.

Howe asked for clarification regarding the city's requirement for fencing around cell towers. Connors explained that barbed wire fencing is allowed in an agricultural district. He added that a developer had challenged that determination with regard to another cell tower in the city that is adjacent to residences. He stated that the Board had determined that barbed wire fencing was not to be allowed in that case. Connors stated that according to the ordinance, barbed wire fencing is allowed in the A-1 district but that the precedent has been set by the Board that it should not be allowed in populated areas.

Howe asked if the applicant's intent had been to install a 7-foot high fence with barbed wire on top. Ward explained that full construction drawings are incomplete, adding that if no barbed wire is used he would prefer to install an 8-foot high fence which would provide extra security.

Howe asked if there is a ladder on a monopole tower. Ward explained that the tower ladder is approximately 13-15 feet from the ground and climbing pegs from that level to the ground.

Howe asked if the tower would be lit. Ward explained that the tower is 190 feet tall and would have a 6-foot lightning rod on top. He indicated that once a tower reaches 200 feet in height, the FAA requires that it be lit.

Soenksen stated that the applicant had submitted the required study demonstrating the service need for the tower, adding that the applicant will be required to allow other cellular service vendors to co-locate on the tower.

Ward explained that the staff report indicates that the compound size would be 25 feet by 25 feet. He indicated that the actual size of the leased area would be 60 feet by 60 feet which would allow additional users the space for their equipment. He indicated that the the entire area would not necessarily have to be fenced at this time.

Rich Bettis, trustee of First Baptist Church, expressed support for the request.

A brief discussion was held regarding what type of fencing material would be required. Stelk commented that he has heard of no problems with the 8-foot high fence that is adjacent to the residences in Belmont Meadows. Connors indicated that the Board had required that the barbed wire be removed from the top of that fence. He added that staff's preference would be for an 8-foot high fence with no barbed wire.

Howe expressed concern about the potential ease of accessibility to the tower. Connors commented that there is a city-owned tower located at the maintenance center at 4403 Devils Glen Road which has an almost identical setup to the one proposed. He indicated that there have been no incidents thus far even though one side of the enclosure borders Crow Creek Park.

Ward stated that he would likely work with the church with regard to the type of fencing that they prefer and would be willing to present those findings to the Board if necessary. He stated that section 18.10.5(f) of the code requires an opaque fence, adding that a chain link fence with slats could be used or a wooden fence. Stelk commented that the tower farm is surrounded by a chain link fence. Connors stated that typically a chain link fence is used and that sufficient landscaping is installed to create the required opacity. Bettis stated that the church would be satisfied with whatever type of material the staff and Board members agree upon.

Howe asked if any motion should be amended to include the discussion with regard to fencing material and height. Soenksen stated that those issues would be addressed as part of the site development plan approval.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Howe, seconded by Voelliger, that a special use permit to allow a wireless communication facility including a transmission tower for

cellular phone use be approved in accordance with the Decision and Order and subject to the condition that the tower be enclosed by an 8-foot high chain link fence.

ALL AYES

Motion carried.

Decision and Order is Annex #15 to these minutes.

- h. Case 11-057; SE 4.6 acres of the Interstate 74 Technology Park (C-6) - A request for a variance to allow parking in a required front yard setback and for a variance to reduce the required rear yard setback from 50 feet to 40 feet, submitted by Alan Frankel.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #16 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Alan Frankel, the applicant, stated that LEDs America wishes to relocate a portion of their business from China to Bettendorf. He indicated that when the development is complete, the structures would be approximately 60,000 square feet in size and would house the corporate headquarters, an assembly and shipping area, and a research and development facility. He explained that the development is being phased to allow the project to begin more quickly. Frankel stated that the business would create 140-160 jobs with a \$6 million payroll and that the development would create \$7.5-\$10 million in taxable real estate value. He indicated that the development is deliberately compact to maximize efficiencies.

Howe asked how tall the building would be. Frankel stated that it would be approximately 17-18 feet high.

Voelliger asked for clarification regarding the location of the loading dock for product shipment. Frankel explained that eventually it will be located to the south, adding that initially there will be no loading dock as the business is mostly assembly of parts. Voelliger stated that eventually a shipping point will be required and asked if it would be located such that it does not negatively affect the businesses which will be located in the previously approved development adjacent to Tanglefoot Lane. Frankel explained that most of the company's shipment utilizes UPS. He indicated that the company has experienced difficulties related to shipping materials from China which has prompted the relocation of the business to the United States. He added that there is an adequate turning radius available for the semi-trailer trucks that will sometimes deliver material to the site. Connors added that the fire marshal has indicated that there is adequate space for delivery operations. Voelliger asked if this would still be the case when the site is fully developed. Frankel explained that at the point, truck traffic would use the

extended Golden Valley Drive and exit to 40th Avenue and so would not affect the businesses to the south. He added that if necessary in the future, the company's headquarters could be relocated to the west side of Golden Valley Drive and that space could be used for assembly.

Falk asked if this is a speculative site or if a letter of intent has been received indicating that the business has chosen this particular site. Frankel explained that the site has been chosen, adding that the tentative closing date is October 13.

Falk asked if there is any objection to basing the approval of the variance requests on the specific layout of the project that was presented. Frankel agreed, but expressed concern about the effect of the restriction on a future owner if the property is sold at some point. Connors stated that if the configuration changes in the future for some reason, another business owner would have adequate space to site the building and parking areas which would not require any variances from the code. He added that because variances from the code apply to property in perpetuity, it could be tantamount to a rezoning if the use or configuration is substantially changed for some reason.

Howe stated that he would be in favor of conditioning approval of the variances based on the submitted layout of the development. He commented that if the first building was built at a 17-foot height and for some reason the remainder of the development did not proceed as planned, a future owner might want to build a multi-story building and would not be required to adhere to ordinance requirements with regard to parking.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Howe, seconded by Voelliger, that a variance to allow parking in a required front yard setback and for a variance to reduce the required rear yard setback from 50 feet to 40 feet be approved in accordance with the Decision and Order and the condition that the variances are based on the submitted configuration of the development.

ALL AYES

Motion carried.

Decision and Order is Annex #17 to these minutes.

Crump asked if the Board would be willing to compromise by allowing the proposed fence to be located 6 feet from the sidewalk. He indicated that the proposed widening of the sidewalk may require that additional right-of-way be taken from his property. Connors stated that this is not the case.

Howe stated that he would be willing to make the suggested compromise and also allow the pool in the required front yard. Voelliger concurred.

Stelk asked if the Board should consider the request for the pool and the fence separately. Soenksen confirmed this, adding that there are two separate sections of the

ordinance involved. He indicated that because the case already been deferred, a motion must be made to reconsider the case and that both parties involved in the motion must agree.

A motion was made by Voelliger to reopen Case 11-046 for discussion. Motion failed for lack of a second.

Falk explained that he is unwilling to second the motion to reopen the case because there are too many ambiguities and unknowns related to the request.

Howe asked for clarification of Falk's objections. Falk explained that typically a variance request is much more precise. He indicated that in this case, there has been discussion during the public hearing in addition to discussions which took place between the applicant and his wife in private. He stated that he would prefer to visit the site so that the exact proposed location of the pool and fence can be definitively established.

Crump stated that his application states that his request is for a 6-foot fence on the property line adjacent to Tanglefoot Lane and for permission for a pool to be located in that setback area. He commented that placing the fence 6 feet from the sidewalk allows sufficient room for anyone exiting the driveway of the property adjacent. Falk stated that if the Board had decided against visiting the site, he would have voted to deny the request. He indicated that he had compromised by agreeing to visit the site, adding that the applicant's willingness to move the fence 6 feet back does not change his mind.

Connors stated that because of the lack of the second, the case must be deferred to a field visit meeting.

Howe stated that the Board had just agreed to allow a 6-foot high fence 1-foot from the property line for a previously-considered case. Falk stated that the two cases are very dissimilar, adding that in his opinion the continuity of the neighborhood involved with Case 11-048 is an important factor. He reiterated that the fence that was approved did not affect any other resident's front yard as the current request does. Stelk commented that in his opinion a swimming pool does not belong in a front yard, adding that he is willing to view the site and possibly compromise. Howe commented that in reality the proposed location of the pool is not in what would normally be considered a front yard. Falk stated that another reality is that the fence and pool would be located in the neighbor's only front yard. Crump stated that because the original meeting had not occurred, his neighbors have had more than adequate time to object to the request. Stelk stated that it is not only the neighbor's wishes that must be considered. Falk added that the impact on the entire community must be considered.

Howe asked if the deferral would cause any particular hardship for the applicant. Crump stated that he has already purchased the fencing and that he would like to begin work on it before the ground freezes.

Stelk commented that the situation is unique enough that a field visit would be advisable. Voelliger asked if a special meeting could be scheduled after the field visit in order to make a decision. Soenksen explained that typically the public hearing is continued to the field visit meeting.

Falk commented that he believes that the Board wishes to make a decision based on facts.

Howe asked if the Board would consider reconvening at the applicant's home immediately. Soenksen stated that there would be no ability to record the meeting properly, adding that he would contact Board members to determine a date for the field visit meeting.

Connors stated that a new Board members has been appointed by the Mayor to replace Kathy McElhiney who has resigned. He indicated that Bryce Johnson, and engineer with Missman, Inc. will be the Board's newest member and will be available for the October meeting.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 7:15 p.m.

These minutes and annexes approved

John Soenksen
City Planner