

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
MAY 10, 2012
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Gallagher, Johnson, Voelliger
ABSENT: None
STAFF: Connors, Fuhrman

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of April 12, 2012.

On motion by Falk, seconded by Gallagher, that the minutes of the meeting of April 12, 2012 be approved as submitted.

ALL AYES

Motion carried.

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

- a. Case 12-031; 2339 - 53rd Avenue (C-2) - A request for a special use permit to allow a drive-in banking facility, submitted by Joe Minorik.

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

Connors reviewed the staff report. Staff report is Annex #3 to these minutes.

Johnson stated that she would abstain from discussion and voting on this case.

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

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

Gallagher asked for clarification regarding the proposed access to Falcon Avenue, adding that his understanding from the staff report is that it is one way. Connors explained that there is full access from both driveways on Falcon Avenue but that the internal driveways on the west and south would be one way.

On motion by Gallagher, seconded by Falk, that a special use permit to allow a drive-in baking facility be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Falk, Gallagher, Voelliger
NAY: None
ABSTAIN: Johnson

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 12-032; 3462 Maple Glen Drive (R-4) - A request for a variance to reduce the required rear yard setback from 25 feet to 16 feet to allow construction of a deck, submitted by Tom Stopulos.

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

Connors reviewed the staff report. Staff report is Annex #5 to these minutes.

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

Vivian Norton, representing the homeowner's association, stated that their Board had approved a request from Stopulos for a 16-foot x 18-foot deck, not a 18-foot x 20-foot deck. She indicated that the association's opinion is that the proposed deck would not intrude any further into the rear yard than others in the neighborhood. She added that they did not feel the request could be denied, especially because of the medical reasons for the request. Norton stated that the association's approval letter did not stipulate a size, reiterating that she does not believe that the deck would intrude any further than others in the subdivision.

Voelliger asked if there are other residents in the subdivision with similar-sized decks. Norton confirmed this, adding that most of them are located nearer Maplecrest Road, not in the neighbor's immediate vicinity. She stated that in the past the association board has limited the size of deck construction because of the proximity to neighbors.

Johnson asked for clarification of the association's position on the increased size of the proposed deck. Norton explained that while the board members had been surprised at the increase, there has not been a meeting subsequent to the last one and therefore there is no official position regarding the change. She commented that the developer had not given a lot of consideration to future construction of decks in this particular area of the subdivision.

Voelliger asked if the decks that currently exist are of a similar size or if they are much smaller. Norton explained that she does not believe that there are any larger ones, but

that she is aware of one deck that is approximately the same size but which is on a lot with a great deal more space in the rear yard.

Falk asked if Norton is aware of any reason why the applicant could not achieve the same goal by constructing a ramp and patio. Norton stated that a deck would be much more serviceable for their situation. She reiterated that the association is not opposed to their having a deck.

Falk commented that regardless of whether the association approves of the proposed deck, the Board must consider only the proposed intrusion into the required setback and whether or not a hardship has been established. He added that he would have a difficult time supporting the request given how narrow the rear yards are in the area. Norton asked if Falk feels as though the smaller deck would be more appropriate. Falk explained that he would not be supportive of any deck that encroaches into the required rear yard.

Norton asked for clarification regarding the size of deck that would be allowed without a variance. Connors explained that the ordinance requires a 25-foot rear yard setback, adding that a deck approximately 11 feet deep would be allowed. Norton stated that she does not believe that a deck of that size would be acceptable to the applicant. She asked if the Board could grant a variance for a smaller deck than requested. Falk stated that the Board must consider the request that was submitted, adding that it would not be appropriate to change the request without the applicant's permission.

Johnson asked if the other decks in the subdivision encroach into required yards. Norton confirmed this. Gallagher asked if the homeowners received variances for the decks that encroach into the setback. Connors stated that he is unaware of any permits having been issued for any of the decks in the Maple Glen area.

Sam Foley, the applicant's contractor, explained that one of the homeowners has difficulty navigating stairs, adding that this is the reason a deck has been proposed rather than a patio.

Voelliger asked if the applicant would consider a smaller deck. Foley explained that Stopulos may be willing to consider a deck that is 16 feet by 18 feet. He indicated that the applicant had a prior commitment out of town but had wished to attend the meeting.

Foley asked if the proposed deck could be made 2 feet wider to make up for the proposed reduction in the depth. Johnson explained that if the extra width does not cause a setback encroachment, it would be acceptable. Foley commented that the steps to the yard would be placed at the side, not the rear of the deck.

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

Johnson commented that the fact that the homeowner's association must approve deck construction might mitigate the concern about approval establishing a negative precedent.

Connors stated that the original developer and builder had left very little space for any homeowner who wishes to construct a deck. Johnson commented that homebuyers are aware of the limitations of any property prior to purchase.

Voelliger stated that he believes homeowners should be allowed to utilize their property to its highest and best use, but expressed concern about the possibility of the proposed deck hindering the ability of neighbors to enjoy their properties.

Foley stated that most of the neighbors have concrete patios, reiterating that this is not a possibility because of the special needs of one of the residents.

Falk asked how far from the ground the deck would be. Foley explained that the deck floor would be 36 inches from the ground and that the railing would add another 36 inches in height.

Falk asked for clarification regarding the height at which the city has purview over such structures. Connors explained that if a deck such as is proposed has footings and is attached to the principal structure, the construction must meet ordinance requirements.

Falk expressed concern about the deck's being so far from the ground and so close to the neighbors, adding that there could easily be privacy and exposure issues.

Gallagher commented that it does not appear as though the applicant has established a legitimate hardship. Voelliger concurred, adding that the proposed deck seems to serve as more of a convenience to the applicant. Falk expressed concern about the precedent that would be set if the variance request is approved.

On motion by Falk, seconded by Gallagher, that a variance to reduce the required rear yard setback from 25 feet to 18 feet to allow construction of a deck be denied in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Johnson, Voelliger
NAY: Falk, Gallagher

Motion failed.

Voelliger suggested that perhaps the Board may be more supportive of an even smaller deck. A brief discussion was held regarding what size deck the Board may find acceptable. Falk commented that the deck should be relative to the amount of space available in the rear yards of the neighborhood if a variance is approved.

Connors stated that it is within the Board's purview to approve a variance to allow a certain amount of encroachment into the rear yard setback but leave the configuration of the deck to the applicant if he finds such a solution acceptable.

Johnson suggested that perhaps some landscaping elements could be used to soften the obtrusiveness of the deck if a modified request is granted.

On motion by Johnson, seconded by Gallagher, that a variance to reduce the required rear yard setback from 25 feet to 20 feet to allow construction of a deck be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Gallagher, Johnson, Voelliger
NAY: Falk

Motion carried.

Decision and Order is Annex #6 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 5:40 p.m.

These minutes and annexes approved

Bill Connors
Director of Community Development