

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**  
**JUNE 9, 2016**  
**4:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Spranger, Voelliger

ABSENT: Gallagher

STAFF: Fuhrman, Beck, Stone, \*Connors

Item 2. Review of Board procedures.

Item 3. The Board to review and approve the minutes of the meeting of May 24, 2016.

On motion by Falk, seconded by Spranger, that the minutes of the meeting of May 24, 2016 be approved as submitted.

ALL AYES

Motion carried.

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

Voelliger announced that the public hearing for Case 16-040 would be held first.

- g. **Case 16-040; 872 Tanglefoot Lane (C-6)** – A request for a variance to reduce the required rear yard setback from 50 feet to 10 feet, submitted by Tanglefoot Investors, LLC/Thomas J. Pastrnak.

Voelliger 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.

Voelliger asked if the properties involved are under common ownership. Soenksen explained that they are not, adding that it is anticipated to become the case at some point in the future.

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

Greg Jager, representing the applicant, explained that the properties are not under common ownership. He indicated that the owner of the property in the area that is zoned C-3 anticipates purchasing the property in question which is zoned C-6 if the variance is granted. Jager stated that the property is in an infill area of the city, adding that the developer wishes to complete the project.

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

On motion by Spranger, seconded by Falk, that a variance to reduce the required rear yard setback from 50 feet to 10 feet be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- a. **Case 16-027; 4555 Utica Ridge Road (C-2)** – A request for a variance to reduce the required front yard setback for parking from 20 feet to 0 feet and to reduce the required sign setback from 20 feet to 5 feet, submitted by Katie Sommers. (Deferred from meeting of May 24, 2016)

Voelliger 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 #5 to these minutes. He stated that the applicant has submitted a revised parking plan which addresses some of the concerns expressed by the Board at the previous meeting. Soenksen indicated that there is an error in the staff report with regard to the setback for the on-premises identification sign at Miller-Meier Limb and Brace located at 4505 Utica Ridge Road. He explained that the sign is actually set back 11 feet from the property line, not 3 feet.

Voelliger stated that it appears as if the greenspace between the sidewalk and the parking area would be at least 7 feet on the southern portion of the property and approximately 2 feet at the north end. Soenksen confirmed this.

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

Jay Sommers, representing the applicant, explained that he believes that the revised schematic addresses the Board's concerns. He indicated that given the configuration of the turn lane on Utica Ridge Road and the traffic signal located there, there would be no visual obstructions caused by the parking proposed to be in the required front yard.

Voelliger asked if any utilities would be disturbed during construction of the proposed parking area. Soenksen explained that as a requirement of the sign placement, the contractor would be required to call Iowa OneCall to ensure that there is no interference with underground utilities.

Falk stated that in his opinion the revised exhibit addresses the concerns expressed by the Board at the previous meeting.

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

Falk requested that the revised parking plan be attached to the Decision and Order to ensure that the depth of greenspace as indicated is provided.

On motion by Falk, seconded by Spranger, that a variance to reduce the required front yard setback for parking from 20 feet to 0 feet and to reduce the required sign setback from 20 feet to 5 feet be granted in accordance with the Decision and Order and the revised site plan submitted by the applicant.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- b. **Case 16-035; 4112 Woodview Drive (R-2)** – A request for a variance to reduce the required rear yard setback from 25 feet to 15 feet to allow for construction of a 16-foot by 16-foot screened porch, submitted by Heartland Builders of the Quad Cities.

Voelliger 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 #7 to these minutes.

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

Carey Nowack, the applicant, stated that he would be available for questions, adding that the staff report addressed all of the pertinent facts.

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

On motion by Spranger, seconded by Falk, that a variance to reduce the required rear yard setback from 25 feet to 15 feet to allow for construction of a 16-foot by 16-foot screened porch be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- c. **Case 16-036; 3431 Maple Glen Drive (PR-3)** – A request for a variance to reduce the required rear yard setback from 25 feet to 15 feet to allow construction of a 14-foot by 14-foot deck, submitted by Ronald and Carolyn Krebs.

Voelliger 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 #9 to these minutes.

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

Ron Krebs, the applicant, stated that staff has covered the issues very well and indicated he would be available if the Board has any questions.

Falk commented that his recollection is that the Board has heard requests for variances in this subdivision before.

On motion by Falk, seconded by Spranger, that a variance to reduce the required rear yard setback from 25 feet to 15 feet to allow for construction of a 14-foot by 14-foot deck be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #10 to these minutes.

- d. **Case 16-037; 2324 Rosehill Avenue (R-2)** – A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Ralph Armstrong.

Voelliger 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 #11 to these minutes.

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

Ralph Armstrong, the applicant, explained that the proposed 6-foot high fence is necessary to protect his children from the presence of the commercial development across the street. He indicated that the vacant lot across the street will eventually also be developed commercially which will create more vehicular and pedestrian traffic. Armstrong stated that in order to prevent pedestrians from looking over a fence, it would need to be 6 feet tall. He stated that because of existing landscaping, the proposed 6-foot high fence must be located on the property line.

Falk asked how long the applicant has owned the property in question. Armstrong stated that he and his wife purchased the home on May 17, 2016.

Falk commented that the existing landscaping already provides a substantial buffer and that he does not believe that the proposed fence would provide any further protection. Armstrong stated that the fence contractor disagrees as he believes that a fence would shield the home from headlights which are not currently blocked by the mature landscaping.

Spranger commented that typically 6-foot high fences are allowed on the property line only along major thoroughfares. She indicated that approving the request would set a precedent for other residential streets in the city.

Voelliger commented that the applicant could install a 4-foot high fence on the property line without the need to obtain a variance. Armstrong explained that a 4-foot high fence would be inadequate to block the headlights and to prevent pedestrians from looking over the fence.

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

Voelliger commented that the Board has never approved similar requests along residential streets. Falk expressed concern about the precedent that would be set for the entire city if the request is approved. He added that the applicants chose to purchase the property knowing of the existing and future commercial development in the area.

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

ALL AYES

Motion carried.

Decision and Order is Annex #12 to these minutes.

\*Connors arrived at this time.

- e. **Case 16-038; 5768 New Castle Lane (R-1)** – A request for a variance to increase the allowable height of an accessory structure from 15 feet to 17 ½ feet, submitted by John O'Brien.

Voelliger 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 #13 to these minutes. He indicated that he had received a letter in support of the request from Rad Pandit of 5772 New Castle Lane.

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

Allyson Davidson, 5719 Remington Road North, stated that she and her husband custom built their home and were aware at the time that eventually a house would be built on the adjacent lot to the north. She stated that her lot is significantly lower than the adjacent one. She indicated that one day while she was outside she noticed that a structure was being built that appeared to be taller than allowed. She explained that she called the city to report the problem, and her husband then spoke to their neighbor.

Davidson stated that unfortunately there is a history of the neighbor's not respecting property. She indicated that her neighbor works at John Deere as does her husband, adding that her neighbor is actually in charge of building factories and is conversant with code requirements. Davidson stated that her husband reported that when he talked to the neighbor he had indicated that the garage had already had to be lowered 2 ½ feet. She indicated that she and Connors visited the site at which the general contractor was present. He stated that the contractor indicated that stairs had had to be installed inside the garage to correct a code violation and had lowered the height of the garage by 2 ½ feet.

Davidson stated that clearly a mistake was made by the city staff person who approved the permit, adding that he is no longer employed by the city. She indicated that a permit was issued for the construction and that is clearly the city's fault that the construction was allowed to occur. She stated that because of the city's mistake, the homeowner will be wronged and she will lose property value. Davidson explained that her home is very expensive and will be difficult to sell in the future because of the enormous garage that is currently being built 7 feet 10 inches from her property line. She indicated that because she is a lawyer, she read the case law on this type of situation and found that even though a building permit was issued, the structure could be

required to be torn down. Davidson stated that government immunity applies and that the city cannot be held responsible for the harm that has occurred to her and the other homeowner. She explained that there have been cases similar to this one concerning building permits which were issued by a city which were later required to be torn down. She indicated that the fact that a building permit was issued does not change the law.

Davidson stated that the homeowner in question obviously knew that the garage was too tall according to city code given the fact that the height was already required to be reduced and that other changes were made to the structure. She stated that as a result of any litigation that she would be willing to initiate, she would find out how much and when they knew there was a problem during a deposition.

Davidson stated that her main issue is with the appearance of the exposed foundation and suggested that an 8-foot high fence be placed on her property to create the optical illusion that the structure is not too tall and which would block her view of that foundation. She stated that a variance would be required in order to construct the 8-foot high fence and proposed that the other homeowner pay for half of the cost. She indicated that the other homeowner had indicated to her husband that he would not be interested in her idea even though her husband told him that they would not fight the construction of the garage if they agreed to the 8-foot high fence on her property. She stated that the proposed fence would mean that her property value would not be negatively affected.

Davidson stated that the city's mistake hurt two homeowners and added that she hopes the other homeowner sees reason and realizes that the best solution is to construct an 8-foot high fence which she is willing to place on her property. She added that the other homeowner would be required to pay at least half of the cost of the fence. Davidson stated that she would be willing to maintain the fence but it would be conditional on her receiving a variance from the Board of Adjustment for the additional height over what is allowed.

Connors stated that he does not relish the fact that staff mistakes are made and permits are issued in error. He added that he has identified the problem and it has been resolved. He explained that the height of the garage is limited to 15 feet at the mid-point of the gable because it is a detached structure. He indicated that a principal structure or a structure attached to a principal structure is allowed to be 35 feet in height. Connors stated that calculating the height at the mid-point of the gable is quite easy but that it was done incorrectly. He indicated that he has spoken to the homeowners and explained that if the variance is denied, the garage could be made compliant if a breezeway is built connecting to the house. He stated that the homeowners are willing to do that, adding that he feels that the additional construction would place a costly burden on them merely to correct an error of the city especially since the garage is almost completed. Connors explained that requiring the homeowners to construct a breezeway would not be his recommendation and that he hopes that the Board would grant the proposed variance based on staff's mistake.

Voelliger commented that the garage appears to him to be a reasonable height and in keeping with the neighborhood, adding that the Board has no control over what, if any, fence is built on Davidson's property.

Falk asked what remedy Davidson is seeking if the variance is denied and whether she expects that the entire structure would be razed. Davidson explained that she will bear the burden if the variance is granted because she feels her property value would be lowered. She stated that she feels Voelliger is mistaken in his claim that the garage is compatible with the neighborhood. She indicated that because the garage in question is detached, it is not comparable. Davidson stated that because of other ordinance requirements, the homeowner was not allowed to attach it to the house. She stated that the other homeowner wants to have a shop and to park his boat on his property which precludes him from attaching the garage to the house. She explained that the Code is clear, adding that the Board does not have the authority to legislate.

Davidson stated that even if the Board feels that an accessory structure can be taller than 15 feet at mid-gable, the legislature disagrees with them. She indicated that the fact that it is detached changes the feel of the area and that the Code requirements are meant to protect her from having to view a taller than allowed structure. She stated that the legislature recognizes that having to see a huge 4-car garage hurts property values. Davidson indicated that if the other homeowner had wanted to attach the garage, he should have done it from the start. She stated that he couldn't do that because he would be breaking the other Code and it would not have been approved. Davidson indicated that Connors wants the issue to go away because his staff made an error, adding that the remedy that she is seeking is that the Board deny the request and that the homeowner will recognize that he must negotiate and pay for half of a fence on her property which would be much less costly than the breezeway option. She indicated that she feels that the other homeowner should share the cost with her of the city's mistake.

Davidson stated that shielding the exposed foundation from her view makes more sense and would help to maintain her property value because the garage would not look as tall from her vantage point. She reiterated that the Iowa courts do not think it is unreasonable to raze non-compliant buildings. Davidson stated that the law is the law, and that while she may think it is unreasonable to remove the garage, the courts do not. She indicated that she is willing to litigate this issue. She stated again that she needs an 8-foot high fence in order to block the view of the structure's foundation.

Spranger asked what would happen if the Board does not grant the variance request. Connors explained that the homeowner has agreed to design and construct an attached breezeway which would bring the property into compliance. Stone explained that the decision whether to construct the breezeway is the homeowner's, adding that if the variance request is denied the structure becomes non-conforming.

Davidson stated that she called Connors after the trusses were put into place and that the homeowner continued to build. She indicated that the fact that the structure is almost complete

is not relevant as the other homeowner had notice of the problem as soon as the trusses were installed.

Voelliger commented that he had viewed the structure from the homeowner's property, not Davidson's. Davidson stated that the Board members are more than welcome to come on to her property to see it from her vantage point.

Voelliger asked how much of the foundation of the garage is exposed. Connors explained that approximately 4 ½ feet of the foundation is exposed at the rear of the structure. He added that because of the topography, the contractor was required to install what is known as a deep foundation.

Davidson stated that in her opinion the garage is not objectionable from the front. She indicated that the house of the homeowner who submitted a letter in support of the request is at an even higher grade than the one in question. She stated that the issue is as much one of topography as anything else.

Volliger asked if the 2 ½ foot differential makes a substantive difference. Davidson stated that it absolutely makes a difference.

Spranger asked if Davidson has any photos showing the rear of the garage from her yard. Davidson indicated that she does not, adding that the other homeowners did not want to incur the cost of building a retaining wall so they regraded her property without asking. She indicated that her grass was ruined, adding that the other homeowners installed drain pipes and a sprinkler box on her property.

Stone stated that is important to keep in mind that the issue before the Board is whether to grant a variance for the additional 2 ½ feet in height of the garage. She indicated that the error in issuing the building permit is one that Davidson could have brought before the Board at the time it was discovered. She reiterated that the issue at hand is whether to grant the variance.

Stone explained that the Code is very specific regarding the factors the Board should consider. She indicated that the Board must decide if there is a hardship to the applicant, if there are extreme circumstances that would justify granting the variance, if the variance is in keeping with the spirit of the Code, and if property values would be maintained. Stone stated that the other issues that have been discussed are not relevant to the decision of whether to grant the variance. She indicated that there are cases in Iowa where a variance was granted and the structure in question was razed when the Board decision was overturned. Stone suggested that if the Board would like more information regarding Iowa case law, the case could be deferred to the next meeting.

Davidson reiterated that she is willing to litigate this issue even though she does not want to as she would rather spend the money on a fence. She stated that the law is clear cut, adding that the standard for a hardship will not be met.

Spranger asked for clarification of the standards required to establish a hardship. Stone explained that normally the threshold to establish a hardship is high. She indicated that in this case the question is whether the city's error is an additional factor that could be used to justify the variance. She stated that if the building permit error was not an issue, there clearly would be no hardship to justify granting the request for the additional height. Stone stated that in her opinion the building permit error is an additional factor that does tip the consideration the other way.

Falk proposed that the case be deferred to the next meeting to give the homeowners an opportunity to possibly resolve the issue. Spranger concurred. Falk commented that because only three Board members are present, any decision made now would have to be unanimous.

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

On motion by Falk, seconded by Spranger, that the request for a variance to increase the allowable height of an accessory structure from 15 feet to 17 ½ feet be deferred to the next regularly scheduled meeting.

ALL AYES

Motion carried.

- f. **Case 16-039; 2255 Falcon Avenue (C-2)** – A request for a variance to allow parking in a required front yard, submitted by Build to Suit, Inc.

Voelliger 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.

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

David Kuster, 2236 Lindenwood Drive, requested that the privacy fence to the rear of the subject property be completed so that the people who currently cut through his yard to reach Falcon Avenue cannot do so. He commented that the Central Standard restaurant currently uses the lot for overflow parking and that the employees congregate at the edge of the existing fence during their work hours. He indicated that he is not opposed to the development but requested that the privacy fence be installed prior to construction of the building.

Soenksen stated that the issue of the fence would be addressed during the site development review process. Connors stated that there is a privacy fence indicated on the submitted site plan. Voelliger commented that the issue before the Board is whether to allow the parking in the required front yard. He asked when the site plan would be presented to the Planning and Zoning Commission. Connors explained that the Planning and Zoning Commission has already recommended approval of the site plan subject to the approval of the variance. He indicated that it would be presented to the City Council after the Board decision is made.

Kuster asked for clarification of to whom the request should be made to install the fence prior to building construction. Kevin Koellner, the applicant, stated that he would install the fence first unless he finds that it would interfere with pouring the foundation. He indicated that at the very least, the fence would be built immediately after the foundation is poured.

On motion by Spranger, seconded by Falk, that a variance to allow parking in a required front yard be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #15 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:15 p.m.

These minutes and annexes approved \_\_\_\_\_  
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John Soenksen, City Planner