

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 22, 2017
5:00 P.M.

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

Item 1. Roll Call

PRESENT: Clements, Falk, Gallagher, Spranger, Voelliger

ABSENT: None

STAFF: Fuhrman, Soenksen, Reiter, Connors

Item 2. Review of Board procedures.

Item 3. The Board to review and approve the minutes of the meeting of April 13, 2017.

On motion by Clements, seconded by Falk, that the minutes of the meeting of April 13, 2017 be approved as submitted.

ALL AYES

Motion carried.

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

- b. **Case 17-041; 4600 Amber Court (R-2)** – A request for an appeal of the Zoning Administrator's decision to prohibit a home occupation, submitted by Melissa Bigelow.

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

Marc Gellerman, attorney representing the applicant, indicated that his client had received a letter from the city stating that she must obtain a home occupation license. He stated that he does not believe that a license is required. He explained that his interpretation of the language defining a home occupation in the zoning ordinance exempts a professional office in a residence

from the requirements imposed on other types of home-based businesses. Gellerman indicated that he believes that a professional office in a residence is not regulated by the zoning ordinance as it pertains to home occupations. He explained that nowhere in the chapter regulating the R-2 district does it refer to the specific exemption of a professional office as it does in the definition of home occupation. Gellerman stated that the ordinance defines a professional office which clearly states that it is allowed. He indicated that the ordinance lists 195 professions which are allowed by that definition, adding that two of the allowed professions are social/welfare workers and therapists and healers. He explained that the ordinance specifically defines a professional office in a residence which would apply to homes in both the R-1 and R-2 districts. He stated that the fact that the sections of the ordinance regulating the R-1 and R-2 districts do not refer to a professional office in a residence proves his assertion. He stated that the only reference in the ordinance regarding a professional office in a residence is that definitional standard which states that it is an office in the dwelling of a member of one of the recognized professions. He added that the definition also regulates the permitted percentage of floor area allowed to be used and limits the size of any sign identifying the business. Gellerman stated that if the Board determines that the applicant's business is a professional office in a residence as defined by the ordinance, no home occupation license would be required. He explained that the ordinance allows the applicant or any other resident to have a professional office in their home as long as he or she is licensed in one of the listed occupations. He added that the regulations regarding home occupations do not apply to his applicant. Gellerman explained that it is his understanding that the neighbor and complainant who lives at 2901 Crow Creek Road operates a maintenance and cleaning service from the home. He indicated that the website for the company gives that address which, according to the ordinance, would be considered to be a home occupation for which a license is required.

Jennifer Smith, 1209 Emerald Woods Court (Davenport), explained that she brings her daughter Sara Reinders to see the applicant in her home. She stated that the applicant's home office is very professional, her children are not present, and that she and her daughter were informed that they should be respectful of the residential character of the neighborhood. Smith indicated that Reinders had selected the applicant as her therapist because she felt more comfortable in that setting and felt that she could speak freely. Reinders stated that she feels very comfortable speaking with the applicant honestly. Smith stated that allowing the applicant to operate her business from her home allows many people the opportunity to receive the care and attention they need. She suggested that if more people were aware of the option of seeing a therapist in a private home, they may more readily seek the help that they need. Smith stated that she believes that the applicant provides a great value to the city.

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 Amber Court is a public street, adding that there are many residents in Bettendorf who give music lessons, hair dressing services, and acupuncture treatments from their homes.

Falk asked if the Board is to determine not whether a license is required but if the applicant is allowed to operate her business from her home. Connors confirmed this. Falk commented that photos were submitted by the complainant that show vehicles parked in front of the applicant's residence. He asked if staff has ever received a complaint regarding the parking of those vehicles on the public street or if staff feels that the use poses a risk to the safety of the neighborhood. Soenksen stated that he has never received such a complaint before the current one. He added that he has visited the site many times per day over the past few weeks and has never seen anything different with regard to street parking that he does in his own neighborhood which is nearby. Falk asked for clarification of what business-related activity staff feels should be controlled. Connors stated that he is the person who determines whether home occupation permits should be issued or not. He indicated that the main factor he considered is whether the business would disturb the residential character of a neighborhood. He explained that in his opinion the ordinance defines a professional office in a residence to prevent people from operating a chiropractic clinic, dentist office, or massage therapy business in their homes. He stated that those types of businesses tend to have a lot of traffic because of the nature of scheduling of appointments. Connors stated that he believes that the applicant's business would be considered to be a professional office in a residence if the standard is the letter of the ordinance. He added that if you consider the intent of the ordinance, the business has a low profile and would not change the character of the neighborhood.

Gallagher stated that perhaps the ordinance regulating these types of businesses should be reconsidered and more clearly defined. He stated that he also believes that according to the letter of the law that the applicant's business should be considered to be a professional office in a residence, adding that it appears as though it causes little to no impact to the neighborhood. He commented that other businesses that are allowed in homes such as hairdressers generate much more traffic in a neighborhood. Gallagher stated that the ordinance needs to be more balanced, adding that the Board is allowed to make adjustments in these types of cases. He indicated that he believes that allowing the business would be an appropriate adjustment. Voelliger concurred.

On motion by Falk, seconded by Spranger, that an appeal of the Zoning Administrator's decision to prohibit a home occupation be granted in accordance with the Decision and Order and that the Zoning Administrator's decision be overturned.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- a. **Case 17-037; 3128 Marynoel Avenue (R-1)** – A request for a variance to reduce the required rear yard setback from 40 feet to 30 feet to allow construction of a 12-foot by 16-foot room addition, submitted by Sampson Construction, 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 #5 to these minutes.

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

Joe Sampson, the applicant, explained that there would be no visible obstruction caused by the proposed room addition given the depth of the detention area. He indicated that the homeowners were not aware of the required 40-foot rear yard setback when they purchased the house.

Rebecca Lindsey, 3128 Marynoel Avenue, stated that her husband is 85 years old and would like to build the room addition because he does not like to sit outside on the deck because of the sun and bugs. She indicated that she has spoken to her neighbors who expressed no objections. She stated that her neighbors have trees and garden boxes in their rear yards, adding that because of that it never occurred to her that she could not add onto her home. She explained that her understanding was that her yard included all of the property with grass on it and never asked for clarification.

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

Voelliger asked if the straight line in the rear yard to which the other homes on the street have been built really means that the homeowners should not be allowed to add onto their home. Connors explained that a 40-foot rear yard setback is required in the R-1 district, adding that it is in place to protect the other homeowners in the neighborhood.

Voelliger commented that nothing will ever be built on the adjacent outlet.

Spranger asked for clarification of the required setbacks in some of the newer subdivisions. Connors reiterated that the R-1 district requires a 40-foot rear yard setback, adding that the R-2 district has a 25-foot rear yard setback requirement. He indicated that many of the newer subdivisions are zoned R-2 as the developers find the 40-foot rear yard setback requirement problematic.

Gallagher stated that it is difficult to establish a legal hardship regarding the case, adding that he does not believe the Board should be put in the position whereby setback variances are granted merely because the members would like to help an applicant. He reiterated that there is

no legal hardship. Gallagher commented that the situation is somewhat unusual in that there is an unbuildable outlot behind the applicant's home. He stated that perhaps the intent of the 40-foot setback is met because of the unbuildable outlot. He indicated that he might be able to support the request if there would be a method of doing so which would not create the precedent of granting variances when no hardship has been established.

Falk stated that under current development standards, similar outlots often contain a water feature. He indicated that if the encroachment into the required setback adjacent to the outlot is allowed, a negative precedent would be set possibly affecting homeowners who live adjacent to outlots with water features. Falk commented that if this precedent is set, the homeowners who purchased homes near water features will be unhappy if construction is allowed which blocks their view. He stated that oftentimes homeowners choose the lots adjacent to water elements specifically for that view. Falk stated that because of the city's storm water detention regulations that require detention ponds, this scenario will become more and more common throughout the city.

On motion by Gallagher, seconded by Spranger, that a variance to reduce the required rear yard setback from 40 feet to 30 feet to allow construction of a 12-foot by 16-foot room addition be denied in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Falk, Gallagher, Spranger

NAY: Clements, Voelliger

Motion carried.

Decision and Order is Annex #6 to these minutes.

- c. **Case 17-042; 1808 Sunset Drive (R-2)** – A request for a variance to reduce the required front yard setback from 25 feet to 5 feet for a 6-foot high fence along 18th Street, submitted by Jacob Swain/Aasiya Laheri.

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.

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

Clements asked if the city's preference would be for the adjacent property owners to purchase the unused right-of-way in order to divest themselves. Soenksen confirmed this, adding that there are private parking spaces on portions of the right-of-way and that the city would bear the responsibility of any accidents or falls that might occur there during the winter. He indicated that there are business signs located on the city's property as well. He explained that he has been working with the property owners for several years in an attempt to facilitate the right-of-way purchase but that none of them are willing or able to pay the price set by the city.

Voelliger commented that the Board recently granted a variance for a 6-foot high fence in a required front yard for the homeowner who lives at the corner of 18th Street and Central Avenue. Gallagher added that many 6-foot high fences are located at homes further north on 18th Street.

On motion by Spranger, seconded by Clements, that a variance to reduce the required front yard setback from 25 feet to 5 feet for a 6-foot high fence along 18th Street be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- d. **Case 17-043; 1407 Olde Freeport Place (R-1)** – A request for a variance to reduce the required rear yard setback from 40 feet to 25 feet to allow construction of an 11-foot by 29-foot deck, submitted by Scott Pearson.

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.

Scott Pearson, the applicant, explained that the homeowner asked him to inspect his deck and that he found that the footings weren't deep enough, the ledger board was not connected to the house, and the joists were dilapidated. He stated that as a safety precaution he removed the deck and concrete footings. He indicated that he plans to replace the deck with composite flooring and aluminum posts.

Gallagher commented that when the original deck was constructed, the permitting rules were different. He indicated that he sees no reason not to approve the request. Clements concurred.

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 Gallagher, that a variance to reduce the required rear yard setback from 40 feet to 25 feet to allow reconstruction of a 11-foot by 29-foot deck be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #10 to these minutes.

- e. **Case 17-044; 6021 Emery Court (R-1)** – A request for a variance to reduce the required front yard setback from 30 feet to 25 feet to allow a portion of a deck to be constructed in a required front yard, submitted by Nick Wood.

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.

Nick Wood, the applicant, explained that the purpose of the deck is so the homeowners have a space large enough for their patio furniture.

Gallagher commented that no hardship has been established.

Spranger asked if there is an existing deck where the proposed deck is to be located. Wood explained that there is a staircase and landing from the covered porch there that is being removed and replaced because it was not constructed properly.

Falk stated that while no hardship has been established, he does not believe that granting the variance would establish any type of precedent. Spranger commented that the encroachment is very small.

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 front yard setback from 30 feet to 25 feet to allow a portion of a deck to be constructed in a required front yard be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #12 to these minutes.

- f. **Case 17-045; Northwest of intersection of Forest Grove Drive and Middle Road (A-1/proposed C-7)** – A request for a variance to allow parking/driveway in a required front yard, submitted by Missman, 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 #13 to these minutes. He indicated that Jeff Reiter, Economic Development Director, would be available if the Board had any questions.

Reiter stated that the Engineering and Community Development staff had flagged what they felt was a public safety issue with regard to the previous site plan on which parking spaces were in the required front yard. He indicated that the parking plan has since been revised to mitigate the issue as much as possible and requested that the variance be approved.

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

Gallagher commented that the developer owns the entirety of the subdivision, adding that when the surrounding commercial lots are sold the new owners will be aware of the parking lot configuration. He indicated that he feels that the revisions made to the parking plan are beneficial.

On motion by Gallagher, seconded by Clements, that a variance to allow a driveway in a required front yard be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #14 to these minutes.

- g. **Case 17-046; 3627-51 Devils Glen Road (C-2)** – A request for a special use permit to allow a bar, cocktail lounge, or tavern with an associated outdoor service area, submitted by Andrew Dasso.

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 #15 to these minutes.

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

Voelliger asked if the glass wall indicated on the rendering submitted would be placed on the property line. Soenksen stated that it would be placed inside the lot line because of the large drainageway running diagonally through the northeast corner of the lot. He indicated that the presence of the drainageway is the reason the proposed building is oriented the way it is.

Voelliger stated that it would be advisable to require a review period for the outdoor service area as has been done for other applicants who made similar requests in the past. He indicated that this would allow the Board to review the appropriateness of the use after it has been in operation. He commented that there are residences across the street.

Falk stated that in the past restrictions have been placed on the hours of operation of outdoor service areas. Soenksen stated that this was the case at Crust Pizza on 53rd Avenue and at Caddy's on Belmont Road. Gallagher commented that the Board should be consistent when imposing restrictions on outdoor service areas. Soenksen stated that other similar uses have been limited to serving alcohol in the outdoor service area only until 10 p.m. and that live music must also end at that time.

Spranger asked if any restrictions were placed on the outdoor service of alcohol at Governor's. Falk commented that there are no residences near their location. Spranger stated that there are condominiums located fairly close to Governor's. Clements asked if any limitations had been imposed on the Treehouse on Kimberly Road given its proximity to residential housing. Voelliger stated that the applicant had only requested permission for a deck, not an outdoor service area. Soenksen indicated that the owner of the Treehouse had never requested a special use permit. He added that the Board has recognized that the location of an outdoor service area in a commercial area is different than one adjacent to a residential neighborhood. He indicated that no restrictions had been placed on the outdoor service area at Sports Fans Pizza on Grant Street.

On motion by Spranger, seconded by Gallagher, that a special use permit to allow a bar, cocktail lounge, and tavern with an associated outdoor service area be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #16 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:20 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner