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## ZONING BOARD OF ADJUSTMENT

Monday, February 9, 2015 @ 3:00 PM  
Third Floor Council Chamber  
101 1<sup>st</sup> Street SE, Cedar Rapids IA 52401

### DECISION AND ORDER

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**Members Present:** Chair Dave Lodge, Bill Vernon, Todd Barker, and Nancylee Ziese  
**Member Absent:** Sue Lowder

**Staff Present:** Ruth Fuessley, Patricia A Pfiffner Building Services  
Dave Houg, Vern Zakostelecky Development Services  
Jeff Hintz Community Development & Planning,

**Others Present:** Ed Popelka re COND-15356, Interstate Power & Light, Chris Gibson  
and Isaac Hodgins, Jeff Harding MediaQuest Signs, Roy & Rachel De Witt  
& Eric Marck/Cleary Buildings

#### **New Business**

Chair, David Lodge called the February 9, 2015 Regular Board of Adjustment meeting to order at 3:00 PM. Attendance taken and a quorum declared. The Board of Adjustment is a Quasi-Judicial Board created by the City of Cedar Rapids. The Board is empowered to vary the regulations of the Zoning Ordinance in harmony with its general purpose and intent where the Board makes Finding of Fact that there are practical difficulties or unnecessary hardships in the way of carrying out the literal provisions of the Ordinance.

This Board reviews Conditional Use requests. When considering a Conditional Use, the Board will keep in mind the following: Is the requested use consistent with the intent and purpose of the Ordinance and with the Future Land Use policy plan; will the use have a substantial adverse effect upon adjacent property and the character of the neighborhood; and will the proposed use be compatible with the immediate neighborhood. This Board also reviews Variance requests. A Variance request should only be granted if the Petitioner establishes that an unnecessary hardship will result if the Zoning regulations are enforced. There are seven criteria for actions on a Variance which were to be addressed in your application. To review they are: Unique Circumstances, Not exclusively for financial gain, Hardship not self-created, Substantial rights denied, not special privilege, not detrimental and No other remedy. A general rule of thumb is that a Variance should prevent a hardship, not grant a special privilege not available to other landowners in similar situation.

Typically "Unnecessary Hardship" means: The land in question cannot yield a reasonable return if used only for the purpose allowed in that zone; the issue in question is due to unique circumstances and not to the central conditions of the neighborhood; the hardship must not be self-created; and the use authorized by the Variance will not alter the essential character of the locality.

We are an independent volunteer Board of citizens appointed by the Mayor and approved by the City Council. We are not part of the City Administration. We are governed by both City and State Codes and Ordinances. The Board is made up of five Board members. The Chair cannot make a motion but has a vote. There must be three (3) affirmative votes to pass. No motion made by the Board will be the same as a denial. Today we have 4 members present.

As a Board of the City, we welcome all testimony. We make our decisions based on the facts and evidence allowed under City Code, presented at this open meeting. While your case is being read by our Secretary we ask that the Petitioner comes forward so your testimony can be heard and recorded. Please give your name and address for the record. You will then be able to present your case. If the proceedings become lengthy, we may ask that testimony be focused on the new facts or evidence not already presented. We will then ask for any objectors. At that time objectors will come forward, state name and address for the record, and then state your objections. The Board will then give the City Staff an opportunity to present information for the case. I will then call for any Board questions or any Board discussion. Final summaries and additional comments may then take place. Based on a motion and a second the Chair will then call for a vote. If your Variance is approved, please understand that you may still have to comply with other regulations and codes, such as applicable Building Codes, to work within. Please visit with the Building Services Department Official for any clarifications. Today there are 4 Board Members present. You have the option to request your case be Tabled. We do have a quorum. Nancy Lee Ziese moved to approve the January 12, 2015 Board of Adjustment minutes, seconded by Todd Barker, motion carried.

**COND-2015-15356:** A Public Hearing regarding an application submitted by Petitioner Michael E Dennis (Titleholder/Owner) for Mardelle M Doud hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as Agriculture in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 1740 13<sup>th</sup> Street NW, Cedar Rapids, IA located in an R-2 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code.

**Findings of Fact:** The Board finds that the site is currently developed as a single-family residence with a tack barn. The conditional use request for Agriculture is to provide for the grazing and sheltering of horses on this property. The Site Development Plan, as submitted, includes the following:

- Lot size is 4.66 acres.
- A 1228 s.f. 2-story residence
- A 1944 s.f. utility building
- A 1056 s.f. tack barn
- No changes to the existing structures on the site are proposed

The City Planning Commission has examined the petition of Michael Dennis requesting a Conditional Use for Agricultural Use in an R-2, Single Family Residence Zone District for property at 1740 13<sup>th</sup> Street NW. At its meeting held on January 22, 2015 the City Planning Commission recommended approval of this request, with no conditions. No staff recommendations. The Board finds the Applicant has received two letters in support of the request. The Board finds no objectors present.

**Disposition:** By a vote of 4-0 the Board of Adjustment approved COND-2015-15356 an application submitted by Petitioner Michael E Dennis (Titleholder/Owner) for Mardelle M Doud hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as Agriculture in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 1740 13<sup>th</sup> Street NW, Cedar Rapids, IA located in an R-2 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code on the property at 1740 13<sup>th</sup> Street NW. Bill Vernon moved for approval of COND-2015-15356. Nancy Lee Ziese seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-2015-15356 is hereby approved as written.

**COND-2014-9582:** A Public Hearing regarding an application submitted by Petitioner Alliant Energy representing Interstate Power & Light whose address is 200 1<sup>st</sup> Street SE, Cedar Rapids, IA Owner(s)/Titleholder(s) hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of

Occupancy for a Conditional Use, which is listed and described as an Electrical Substation in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 150 38<sup>th</sup> Street Drive SE Cedar Rapids, IA located in the C-3 & O-S Zone Districts, under the authority granted to the Board of Adjustment by Section 32.02.030.D of said Municipal Code.

Findings of Fact: The Board finds that this is a new submitted site plan for the CU of August 2009 for the Emerald Isle Substation. The previous site plan has lapsed (construction was not commenced within a year). The Board finds that at its meeting held on January 22, 2015 the City Planning Commission recommended approval of this request, subject to the following conditions:

1. PRIOR TO THE ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY, the property owner shall be responsible to submit to the City a signed Agreement for Private Storm Water Quality improvements on this site. The City Public Works Department shall provide a copy of the Agreement form upon request by the property owner.
2. The property owner shall be responsible to construct 6' wide concrete sidewalk along 1st Avenue East and 5' wide sidewalk along 38th Street Drive SE adjoining this site prior to a final certificate of occupancy. The City will reimburse the property owner for a 1' wide portion of the 6' wide sidewalk in accordance with City policy. The property owner shall construct the sidewalk improvements in accordance with City Standards, ADA requirements, and improvement plans accepted by the City Public Works Director/City Engineer. The property owner may request deferral of the sidewalk installation requirement if in accordance with the sidewalk installation policy.

The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved COND-2014-9582 an application submitted by Petitioner Alliant Energy representing Interstate Power & Light whose address is 200 1<sup>st</sup> Street SE, Cedar Rapids, IA *Owner(s)/Titleholder(s)* hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as an Electrical Substation and which is to be located upon the premises at 150 38<sup>th</sup> Street Drive SE Cedar Rapids, IA located in the C-3 & O-S Zone Districts. Following discussion Todd Barker moved for approval subject to conditions. Bill Vernon seconded, motion carried. Therefore be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-2014-9582 is hereby approved subject to conditions:

1. Prior to the issuance of a Final Certificate of Occupancy, the property owner shall be responsible to submit to the City a signed Agreement for Private Storm Water Quality improvements on this site. The City Public Works Department shall provide a copy of the Agreement form upon request by the property owner.
2. The property owner shall be responsible to construct 6' wide concrete sidewalk along 1st Avenue East and 5' wide sidewalk along 38th Street Drive SE adjoining this site prior to a final certificate of occupancy. The City will reimburse the property owner for a 1' wide portion of the 6' wide sidewalk in accordance with City policy. The property owner shall construct the sidewalk improvements in accordance with City Standards, ADA requirements, and improvement plans accepted by the City Public Works Director/City Engineer. The property owner may request deferral of the sidewalk installation requirement if in accordance with the sidewalk installation policy.

**V07-2015-15886:** A Public Hearing regarding an application submitted by Petitioner MediaQuest Signs re Kennedy High School hereby requesting that the Board of Adjustment authorize the issuance of Sign Permits to install three 21 square feet free-standing ground signs on the East lot frontage that would create 4 free-standing signs on the east frontage in lieu of the maximum 1 allowed and when combined with the existing 16.5 square feet monument sign, would total 79.5 square feet in lieu of the maximum 48 square feet allowed and thereby would not comply with the provisions of the Zoning Ordinance on the property at 4545 Wenig Rd NE, R-2 Zone District.

Findings of Fact: The Board finds that Subsection 32.06.030.C –Table 32.06-1 – On-Premise Signs Table Residential Districts -Freestanding signs for a non-residential use are limited to a maximum 48 square feet and are limited to one sign per lot frontage establishment. The Board finds that Subsection 32.06.020.C.8 – Informational Signs - Informational signs not exceeding six (6) square feet in surface area or the maximum surface area for accessory signs set forth in Table 32.06-1, whichever is larger, displayed strictly for the direction, safety or convenience of the public, including signs that identify restrooms, telephones, danger

areas, parking area entrances or exits, freight entrances, navigation, or the like. When viewable from a public right-of-way these signs shall meet all of the following criteria:

- a. No more than four (4) feet in total height (mounted on wall or in ground);
- b. No more than two (2) such signs per approved entry/exit point;
- c. Permanently anchored or fastened.

The Board finds that appellants submitted the required criteria sheet indicating the property is zoned residential and as such has limitations for the number of free-standing signs and allowed square footage. The request is for three (3) non-illuminated 21 square feet directional signs, each which exceeds the maximum 6 square feet allowed to not require a permit that will be used to assist with traffic and direct people to the proper location. This parcel is a school campus and as such the limitation of one free-standing sign prohibits the additional freestanding directionals. Given that the school campus is large, these signs would help direct traffic to enter at the appropriate locations for the function and or activity they are trying to get to. The code doesn't address campus environments well and previous similar variances have been approved in the past. The Board acknowledges the property is approximately 37 acres and is home to Kennedy High School. There is one existing 16.5 square feet monument sign along the east frontage facing Wenig Rd NE. A previous variance was approved (V35-2006) for a pole sign with an LED message center to exceed the maximum square footage and height along 42<sup>nd</sup> St NE. Staff acknowledges that the property is on a large lot and has a large amount of lot frontage for a residentially zoned lot. A recent Ordinance update (ORD 027-14) was created to address campus signage, but it only makes exceptions for those directional signs not visible from the right-of-way. These 3 proposed signs will all be 5 feet from the property line and easily visible from Wenig Rd NE. The Board acknowledges that Staff has not received any concerns or complaints regarding this variance request. The variance request has been sent to Community Development Department/Planning for further review/comment. The Board finds no objectors present.

**Disposition:** By a vote of 4-0 the Board of Adjustment approved V07-2015-15886 an application submitted by Petitioner MediaQuest Signs re Kennedy High School hereby requesting that the Board of Adjustment authorize the issuance of Sign Permits to install three 21 square feet free-standing ground signs on the East lot frontage that would create 4 free-standing signs on the east frontage in lieu of the maximum 1 allowed and when combined with the existing 16.5 square feet monument sign, would total 79.5 square feet in lieu of the maximum 48 square feet allowed and thereby would not comply with the provisions of the Zoning Ordinance on the property at 4545 Wenig Rd NE, R-2 Zone District. Following discussion Nancy Lee Ziese moved for approval citing not detrimental and subject to condition. Todd Barker seconded, motion carried. Therefore be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V07-2015-15886 is hereby approved subject to condition:

1. The signs shall remain directional in nature and non-illuminated.

**V08-2015-15928:** A Public Hearing regarding an application submitted by Petitioners Roy & Rachel De Witt hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 42 feet by 60 feet, 2,520 square feet, single story detached accessory structure, which will exceed the maximum 900 square feet allowed and will not comply with the design standards (steel siding and roof) and thereby will not comply with the following provisions of the Cedar Rapids Municipal Code on the property at 2412 18<sup>th</sup> Street SW, R-2 Single Family Residence Zone District.

**Findings of Fact:** The Board finds that Subsection 32.05.010.A.4.c.ii– Ord. No. 027-14 – Exceptions to Size of Structure states the nine hundred (900) square foot (or 200%) for the Agricultural District) limit may be exceeded if all the following criteria, i-vi below are met (for the proposed accessory structure)

- ii. The accessory structure shall be constructed of materials similar to that of the primary structure.

The Board finds appellants submitted the required criteria sheet indicating that the property is unique due to the size in that it is over 1 acre and that there are 2 existing detached structures that must be torn down due to their age which they currently use for their storage needs. The appellants mention that the structure will not be for financial gain but will be used for their personal storage needs. The appellants also cite hardship not self-created as it would be extremely difficult to try to repair the existing buildings over 100 years instead of building a new structure. The applicants also cite not detrimental as the structure will not be seen from the street and is 20 feet shorter than the existing building. The Board acknowledges that City records indicate the subject single family dwelling was built in 1910. There is currently an existing 420 square feet detached garage and a 640 square feet barn that will be removed if this variance is approved. The lot is over 1 acre and is 110 feet x 660 feet. While the house has steel

siding and the proposed structure will have steel siding and roof, the look and feel of the materials is different enough that staff's determination is that they would not be considered similar materials. The Board acknowledges the applicants have submitted a recorded affidavit stating that the proposed detached accessory structure is intended to be used for residential storage and is not going to be used to park vehicles. The Board acknowledges the Building Services Division has not received any complaints or concerns regarding the scope of work listed for the proposed detached accessory structure. The variance request has been sent to Community Development Planning Department for further review/comment. The Board finds no objectors present.

Disposition: By a vote of 4-0 the Board of Adjustment approved V08-2015-15928 an application submitted by Petitioners Roy & Rachel De Witt hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 42 feet by 60 feet, 2,520 square feet, single story detached accessory structure, which will exceed the maximum 900 square feet allowed and will not comply with the design standards (steel siding and roof) and thereby will not comply with the following provisions of the Cedar Rapids Municipal Code on the property at 2412 18<sup>th</sup> Street SW, R-2 Single Family Residence Zone District. Following discussion Nancy Lee Ziese moved for approval citing unique circumstances / not detrimental and subject to conditions. Todd Barker seconded, motion carried. Therefore be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V08-2015-15928 is hereby approved subject to conditions:

1. For residential use only.
2. Not to be used for vehicle storage, unless a compliant hard surfaced driveway is provided

Bill Vernon moved to adjourn at 3:40 PM, motion carried.

Prepared by Patricia A Pfiffner  
Recording Secretary Board of Adjustment