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ZONING BOARD OF ADJUSTMENT

Monday, May 11, 2015 @ 3:00 PM

Third Floor Council Chamber

101 1st Street SE, Cedar Rapids IA 52401

DECISION AND ORDER

Members Present: Chair Dave Lodge, Bill Vernon, Sue Lowder
Todd Barker and Nancy Lee Ziese

Staff Present: Kevin Ciabiatti, Building Services
Dave Houg, Vern Zakostelecky, Ruth Fuessley, Patricia A Pfiffner
Development Services

Others Present: Vinesh Malde AVM Hospitality, Rick Swarzendruber Berthel Fisher,
Doug Brain Brain Engineering, Gary Gilbert GG Properties, LLC, Josh Smith
Media Quest and John Huber, Haley Coughlin and Matthew Moss
Old Business – Ray Burke

New Business

Chair, David Lodge called the May 11, 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 5 Board Members present. You have the option to request your case be Tabled. We do have a quorum. Sue Lowder moved to approve the April 13, 2015 Board of Adjustment minutes, seconded by Bill Vernon, motion carried.

COND-2015-17217: A Public Hearing regarding an application submitted by Petitioner Vinesh Malde representing AVM Hospitality, Inc. whose address is 4011 16th Avenue SW, 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 a ground-floor dwelling unit in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 4011 16th Avenue SW, Cedar Rapids, IA located in the C-3 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 the applicant wishes to convert a portion of an existing motel into a dwelling unit. The development has the following characteristics: Total site area: 1.37 acres, Total area of building: 21,991 square feet. Total parking required: 1 per room and 2 per dwelling unit (52 spaces). The total parking provided: 53 spaces. The conditional use applied for is permitted in the district within which the property is located. The proposed use and development will be consistent with the intent and purpose of this Ordinance and with the Future Land Use Policy Plan and other elements of the Comprehensive Plan. The Board acknowledges that the City Planning Commission examined and approved the request at its meeting on April 30, 2015. No conditions requested. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner Vinesh Malde representing AVM Hospitality, Inc. whose address is 4011 16th Avenue SW, 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 a ground-floor dwelling unit in Subsection 32.04.020. of the Municipal Code, and which is to be located upon the premises at 4011 16th Avenue SW, Cedar Rapids, IA located in the C-3 Zone District. Nancy Lee Ziese moved for approval, seconded by Todd Barker, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-2015-17217 is hereby approved as written.

V20-2015-17183: A Public Hearing regarding an application submitted by Petitioner Hunter Parks for 42nd and Edgewood, L.L.C. hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit for a 27,000 square foot 3-story commercial structure that will not provide a required off-street loading berth on the property at 4201 42nd Street NE, C-2 Community Commercial Zone District.

Findings of Fact: The Board finds that Subsection 32.05.020.C.1. requires all non-residential structures containing more than 10,000 square feet of gross floor area to provide an off-street loading berth. The Board finds the Appellant claims that the area required for a loading berth is better utilized as staff parking. Tenants wish to keep the front of the building available for customer and client parking. The proposed use of the building (office, retail, restaurants) does not require a dedicated loading berth. Deliveries will be made at the rear of the building and will be of short duration. The Development Services Division has reviewed this request and does not see a demonstrated hardship nor unique site features supporting the request. It is noted that granting of the variance may be precedent-setting. The use to be retail and sales/services with delivery at the rear of the building, east end. They will accept the burden of no loading berth. Discussion followed regarding the use of public right-of-way. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner Hunter Parks for 42nd and Edgewood, L.L.C. hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit for a 27,000 square foot 3-story commercial structure that will not provide a required off-street loading berth on the property at 4201 42nd Street NE, C-2 Community Commercial Zone District. Following discussion Sue Lowder moved for approval citing not detrimental subject to condition. Bill Vernon seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V20-2015-17183 is hereby approved subject to condition.

1. Vehicles picking up and dropping off shall not use public right-of-way for maneuvering.

V21-2015-17415: A Public Hearing regarding an application submitted by Petitioner Brain Engineering for Keith Mills / Triton, Inc. hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a 3,600 square foot warehouse addition. The project will not provide a bufferyard along the northerly property line in lieu of a required 25' bufferyard where adjacent to residentially-zoned property on the property at 250 33rd Street Drive SE, I-1 Light Industrial Zone District.

Findings of Fact: The Board finds that Subsection 32.05.030.A.4.d. requires a lot located adjacent to a Residential Zone District to provide a bufferyard. The required yard depth shall be either that required for the district in which the property is located, or that required for the adjoining district, whichever is greater, and shall be provided along the adjoining residential lot line on the property. The Board acknowledges Petitioner stating the irregular shape lot creates difficulties for on-site trailer storage. The bufferyard area is currently being utilized without screening. This project will provide solid screening, thus enhancing the property. The Board acknowledges that Development Services has reviewed this request and has no objection, provided that the applicant works with the adjoining property owners to alleviate any issues or concerns they might have. The lot has an irregular shape that limits usable area. The Preliminary Site Development Plan for this project was approved unanimously by the City Planning Commission at their April 30th meeting. Appellant states they are working with neighbors in regard to landscaping. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a 3,600 square foot warehouse addition. The project will not provide a bufferyard along the northerly property line in lieu of a required 25' bufferyard where adjacent to residentially-zoned property on the property at 250 33rd Street Drive SE, I-1 Light Industrial Zone District. Following discussion Nancy Lee Ziese moved for approval citing not detrimental. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V21-2015-17415 is hereby approved as written.

V22-2015-17730: A Public Hearing regarding an application submitted by Petitioner Schnoor-Bonifazi for Meth-Wick Community, Inc. hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit for a 6' high vinyl screen fence. The fence will be located within a required front yard setback in lieu of prohibiting fences or walls over 3' in height within the required front yard setback. The property is located at 1225 (1224) 13th Street NW, RMF-2 Residential Multi-Family Zone District.

Findings of Fact: The Board finds that Subsection 32.05.010.D.2.b. requires that no fence, wall, or combinations of such items exceeding a height of 3 feet above ground level shall be erected within the required front yard in any district. The Board finds the Appellant intends to construct a 4-story, 18-unit senior housing complex. The requested fence will help route tenant and visitor traffic through the Meth-Wick campus instead of Harrison Court NW and will prohibit cut-through traffic from the adjacent school. Additionally, the fence will screen a school parking lot north of L Avenue NW from the new building. Development Services has reviewed this request and has no objection. A rezoning request with a Preliminary Site Development Plan is currently in the approval process. The Board acknowledges that Staff supports the request. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit for a 6' high vinyl screen fence. The fence will be located within a required front yard setback in lieu of prohibiting fences or walls over 3' in height within the required front yard setback. The property is located at 1225 (1224) 13th Street NW, RMF-2 Residential Multi-Family Zone District. Following discussion Bill Vernon moved for approval citing unique circumstances. Sue Lowder seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V22-2015-17730 is hereby approved as written.

V23-2015-17778: A Public Hearing regarding an application submitted by Petitioner GG Properties, LLC hereby requesting that the Board of Adjustment authorize the issuance of Sign Permits to install new/improved (replacement) signs that would exceed the maximum allowable 32 square feet for primary occupancy frontage and 24 square feet for the secondary occupancy frontages on the property at 1901 – 1917 Mt. Vernon Road SE, C-1 Mixed Neighborhood Convenience District.

Findings of Fact: The Board finds that Subsection 32.06.030.C. (*Table 32.06-1 On-Premise Signs*) states wall sign(s) on the primary building occupancy frontage may be provided at .5 square foot per foot of frontage to a maximum 32 square feet and .5 square foot per foot of occupancy frontage not exceeding 75 percent of the area allowed for the primary occupancy frontage. The Board finds Appellant submitted the required criteria sheet indicating unique circumstances as the building is older and has been part of a neighborhood for many years providing a commercial duplex type occupancy. The positioning of the building is very close to the street and sidewalk and in order to be visible and recognizable additional signage is requested as the C-1 Zoning District is so limiting. The Board acknowledges the Variance will not weaken the general purpose of existing rules nor the essential character of the district as the current signage has exceeded the C-1 district limitations for years. The Variance will not substantially or permanently impair the appropriate use of adjacent conforming property or impair or create unsafe conditions for traffic. The Board finds the lot is a corner lot with the building(s), built in the 1915. Allowing signage based on the C-2 district regulations is preferred/supported vs rezoning to a C-2 district which affects permitted uses. This will allow for smaller temporary banners for special events, sales, etc. The Board acknowledges that the existing sign(s) on the building(s) exceed the maximum square feet for the C-1 Zoning District. The Board finds that Staff has no objection to the request to allow for wall signs to exceed the maximum allowable square feet imposed by the C-1 District whereas subject to the limitations per the C-2 Zoning District, thereby a maximum of 110 square feet on the primary occupancy frontage (north/Mt Vernon Road elevation) and a maximum of 55 square feet on the secondary occupancy frontages (East & West elevations). The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner GG Properties, LLC hereby requesting that the Board of Adjustment authorize the issuance of Sign Permits to install new/improved (replacement) signs that would exceed the maximum allowable 32 square feet for primary occupancy frontage and 24 square feet for the secondary occupancy frontages on the property at 1901 – 1917 Mt. Vernon Road SE, C-1 Mixed Neighborhood Convenience District. Following discussion Sue Lowder moved for approval citing not detrimental. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V23-2015-17778 is hereby approved as written. Following discussion Sue Lowder moved for approval citing unique circumstance and not detrimental. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V23-2015-17778 is hereby approved as written.

V24-2015-17954: A Public Hearing regarding an application submitted by Petitioner Josh Smith for John Huber hereby requesting that the Board of Adjustment authorize the issuance of a Sign Permit to install a new 128 square feet wall sign (displayed on the south elevation) that would exceed the maximum 80 square feet allowed on the property at 1737 33rd Avenue SW, O-S Office Service District.

Findings of Fact: The Board finds that Subsection 32.06.030.C. (*Table 32.06-1 On-Premise Signs*) states wall sign(s) on the primary building occupancy frontage may be provided at up to 2 square feet per foot of occupancy frontage; secondary occupancy frontage(s) 2 square feet per foot of occupancy up to 50% of the area allowed for the primary occupancy frontage. Total maximum allowable area for these types of signs is ¼ of the wall size. The Board finds the Appellant submitted the required criteria sheet indicating unique circumstances due to the unique location/elevation of the lot/buildings. Granting the Variance will not have a negative impact to the neighboring property owners (residential or commercial) or weaken the general purpose of existing rules/regulations. Granting the Variance will not alter the essential character of the district; rather provide minimal signage to identify the use. The Board acknowledges the topography of the subject lot adds a visibility dynamic. The Board finds this property was developed for mini storage warehousing and was granted previous Variance (64-2013 & 51-2014) for design standards and fencing. Staff has no objection to the request. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner Josh Smith for John Huber hereby requesting that the Board of Adjustment authorize the issuance of a Sign Permit to install a new 128 square feet wall sign (displayed on the south elevation) that would exceed the maximum 80 square feet allowed on the property at 1737 33rd Avenue SW, O-S Office Service District. Following discussion Todd Barker moved for approval of V24-2015-17954 citing unique circumstances. Bill Vernon seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V24-2015-17954 is hereby approved as written.

V25-2015-17959: A Public Hearing regarding an application submitted by Petitioner Justin and Haley Coughlin hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new one-story addition (kitchen) to the ranch style single family dwelling 9 feet wide by 14 feet long (with up to 1 feet overhang including gutters in order to match existing) that would provide 5 feet 3 inches corner side yard setback, in lieu of 15 feet required on the property at 925 32nd Street SE, R-3 Single Family Residence District.

Findings: The appellants recently acquired above mentioned property. It is a reversed corner lot with irregular shape and no alley access. The property is 52 feet wide at east elevation by 140 feet long. A mildly curved road carved out a portion of the back yard which gives it an irregular shape. The property is becoming narrower toward west elevation ending with 34 feet wide property line. The one-story, ranch style single family dwelling was built in 1941. It has 1,591 square feet of the living area. The proposed one-story single family addition is 9 feet wide (with up to 1 feet overhang including gutters in order to match existing) by 14 feet long. It will provide additional kitchen space. The proposed structure will provide 5 feet 3 inches required corner side yard, in lieu of 15 feet required by R-3 district regulations. Structural plans have not been submitted for the Building Review. Another way to address this situation would be for the property owner to construct a second story without impacting existing setbacks. The Board acknowledges the Variance pertains to required corner side yard. Staff supports the appeal. The request has been sent to Community Development for review. Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner Justin and Haley Coughlin hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new one-story addition (kitchen) to the ranch style single family dwelling 9 feet wide by 14 feet long (with up to 1 feet overhang including gutters in order to match existing) that would provide 5 feet 3 inches corner side yard setback, in lieu of 15 feet required on the property at 925 32nd Street SE, R-3 Single Family Residence District. Following discussion Nancy Lee Ziese moved for approval citing unique circumstances. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V25-2015-17959 is hereby approved as written.

V26-2015-18015: A Public Hearing regarding an application submitted by Petitioner Matthew J Moss hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 33.5 feet by 8.5 feet open deck addition (shall not exceed 3 feet in height) that would be as close at 8 feet from the rear property line in lieu of the minimum 15 feet required setback on the property at 4202 Pine View Drive NE.

Findings of Fact: The Board finds that Subsection 32.05.010.B.1. Table 32.05-1 requires a minimum 25 feet rear yard setback, as measured from the property line. The Board finds that Subsection 32.05.010.D.2 (Table 32.05-3) Permitted Encroachments in Required Yards states that open decks, including steps, but not including a permanently roofed-over or enclosed deck may extend no more than 10 feet into the required front yard or the required rear yard and shall maintain a minimum 10 foot distance from a street right-of-way and rear lot line, except in the Core Area, where it may extend to within 7.5 feet of the street right-of-way. The floor of an open deck in a required yard shall not exceed 3 feet in height above the average ground level.

The Board finds Appellant submitted the required criteria sheet indicating unique circumstances due to a reversed corner lot that is complicated by elevation and utility easement. The Board finds the yard is not usable or enjoyable because of a shallow, steep hill which is a hardship not self-created. The Board finds granting the Variance would not be detrimental and not be for financial gain, rather for enjoyment which is not a special privilege rather a right that nearly every homeowner has. Finds no other remedy or feasible option available to allow the rear yard to be more used and enjoyed. The Board acknowledges the subject lot is a reversed corner lot in a well-established neighborhood. The subject lot does have a significant hill effect in the rear yard area. The proposed deck would not be seen from the right-of-way(s). The Board acknowledges this property was granted a Variance for reduced rear yard setback for an attached garage on March 11, 2013. Staff has no objection to the request. The Board finds no objectors present.

Disposition: By a vote of 5-0 the Board of Adjustment approved an application submitted by Petitioner Matthew J Moss hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 33.5 feet by 8.5 feet open deck addition (not to exceed 3 feet in height) that would be as close at 8 feet from the rear property line in lieu of the minimum 15 feet required setback on the property at 4202 Pine View Drive NE. Following discussion Sue Lowder moved for approval citing unique circumstances and not detrimental. Todd Barker seconded, motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V26-2015-17959 is hereby approved as written.

Old Business: Bill Vernon Abstained

Ray Burke, 422 Rose Avenue, Swisher, IA appeared to testify representing Norman Workman, 5149 South Tujunga Drive, Springfield, Mo (Titleholder/Owner) regarding property at 4225 Glass Road NE, requesting to rescind the Conditional Use regarding an Animal Eye Veterinarian Clinic that was granted by the Board at its meeting held on November 10, 2014. Plans have changed and Petitioner, Sinisa Grozdanic, Veterinarian, is not going to operate a Clinic at this location. Staff supports the request. Todd Barker moved to rescind COND-2014-13867. Nancy Ziese seconded motion carried. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND-2014-13867 is hereby approved rescinded. .

Motion to adjourn at 3:45 PM, motion carried.

Prepared by Patricia A Pfiffner
Recording Secretary Board of Adjustment