

CITY1586.DSS

Chairperson Blaser called to order the June 1, 2016, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Pfannkuch Present
Cunningham Absent

Item 1 – Consent Agenda

Item 1a – Minutes of May 18, 2016

Moved by Board Member Pfannkuch; seconded by Board Member Celsi, to approve the May 18, 2016 meeting minutes.

Vote: Blaser, Celsi, Christiansen, Pfannkuch Yes
Cunningham Absent

Motion carried.

Item 2 – Old Business

Item 2a – 904 9th Street and 905 Grand Avenue – Approval of a 3,200 sf drinking establishment with food service and outdoor patio and approval of a variance of the front yard building setback requirement along Grand Avenue, a variance of the front yard building setback requirement along 9th Street, a waiver and deferral from minimum parking required, and an allowance to install a fence in lieu of providing a buffer - Boggs Properties, LLC – PC-003068-2016

Chairperson Blaser stated that the applicant had withdrawn their request.

Item 3 – Public Hearings

Item 3a – Cellular Communication Tower, 4101 EP True Parkway – Approval of Permitted Conditional Use Permit to construct a 105 foot communications tower and associated equipment area – SBA Communications - PC-002968-2016

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on May 13, 2016, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Celsi, seconded by Board Member Christiansen, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Pfannkuch Yes
Cunningham Absent

Motion carried.

Chad Gargrave, Black & Veatch, 7600 S. County Line Road, Burr Ridge, IL, representing SBA Communications, requested approval to construct a 105 foot communications tower and associated equipment area at 4101 EP True Parkway. He continued by giving an in-depth presentation on the determination of need, site selection, and installation detail of a wireless communication facility, a project he had been involved in for over a year. He continued that SBA Communications owns, designs, and operates wireless facilities within cities and municipalities and then leases space on the tower for cellular service providers. With this proposal, the lease would be with Verizon wireless.

Mr. Gargrave continued that the proposed location, 4101 EP True Parkway, was chosen based on need, lack of existing structures, local ordinances, consistency with Comprehensive Plan, minimal impact to the location, population density, and topography. He provided information on why other sites had been eliminated, i.e., too far away to serve the community, too close to other structures which could cause technical difficulties, deed restrictions, etc. A service coverage map was displayed showing the area which had a gap in coverage.

Board Member Christiansen inquired as to the maintenance required for the area with trucks going in and out. Mr. Gargrave stated that a truck would come to the site to service the equipment once a month noting that there was ample parking on access drives for such visits. A large truck would be used to erect the tower. The company would also be responsible for snow removal in the winter.

Board Member Cunningham joined the meeting at 5:35; roll call was retaken at 6:02 pm.

Roll Call: Blaser, Celsi, Christiansen, Cunningham, Pfankuch.....Present

Mr. Gargrave expressed agreement with all staff Recommendations and Conditions of Approval.

Board Member Celsi asked how could a six foot structure (the equipment platform) blend into the natural surroundings. Mr. Gargrave provided a view of the facility stating that the facility would be constructed six feet off the ground surrounded by plantings and additional existing trees. The view of the facility would be mitigated by the natural landscape and the low spot in the location where the facility would be constructed. There would be a six foot tall fence surrounding the property for security purposes.

Board Member Celsi asked if Westcom, the City's 911 system, noticed an increase in dropped calls during emergencies and were they asked to provide data or a report. Mr. Gargrave responded that he did not have that information, but to keep in mind that they were also considering future growth.

Chairperson Blaser asked if anyone from the audience would like to comment on this item.

Avis Shuck, 4400 EP True Parkway, Unit #49, stated that she had visited the Park Board and was surprised at the chosen location as two other possible places had been identified for the location of the cell tower. She and others were of the understanding that the tower would be located at the 39th Street location. Ms. Shuck commented that it would be a shame to put this tower in a park as it is one of few places located along EP True Parkway that is untouched. If an access road was installed, trucks would be in and out which would disturb the many deer in the area. Wildlife and children would also be impacted. It was also her understanding that the place by the former Dahls was under consideration which seemed more commercial than a park area. She alleged that studies have been conducted and confirmed that property values could be lowered with the installation of a cell tower.

Diane Lohnes, 4400 EP True Parkway, Unit #50, also attended the Park Board meeting and was informed that the Dahls location was a possibility, but did not know why it was eliminated from consideration and would like to know the reason. She also expressed her concern with the property value issue which could be lowered.

Chairperson Blaser then asked for additional questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Planner Tragesser stated that in working with SBA in the design of the site, the site appeared to be in compliance with zoning regulations. She stated that the tower was shorter than other towers approved within the City; the landscaping around the enclosure has been enhanced to further screen the facility; the black vinyl chain link fence was a City recommended material, and that the tower could accommodate at least one other service provider. Ms. Tragesser continued that towers are only allowed as the Permitted Conditional Uses in Open Space, General Industrial, and Light Industrial districts.

Ms. Tragesser informed the Board that the Dahls site (5003 EP True Parkway) is zoned for Neighborhood Commercial uses and that communication towers are not allowed in the commercial district. The 39th Street location has a specific deed restriction which restricts the use of the property for municipal purposes only. The Ace Hardware site was also an initial consideration, but it too is zoned Neighborhood Commercial. The 4101 EP True Parkway seemed to be a compromise solution as it has been demonstrated that there is a coverage gap. Staff has tried to locate the tower in as much of an unobtrusive spot as possible to mitigate the impacts to the area given the circumstances of the coverage gap and the desire of the communications company to locate in this area.

Board Member Christiansen asked how high the fence could be installed. Ms. Tragesser stated that the fence could be built as high as needed to provide complete screening of mechanical equipment.

Board Member Christiansen asked how staff felt about vinyl inserts. Ms. Tragesser commented that staff doesn't recommend vinyl inserts.

Board Member Christiansen inquired if there was language in place to protect the trails if they were damaged by the trucks used for this project. Ms. Tragesser replied that negotiations are taking place, and the trail is to be rebuilt from EP True Parkway to just past an entrance drive to the facility and that any damage to the trail by this activity would be repaired by SBA.

Board Member Celsi commented that the site at 39th and EP True Parkway is already an eye sore with utilities, power poles, etc. with a power facility directly across the street. Ms. Celsi asked why locate a pole in pristine parkland when this lot may be available. She indicated that they could wait to hear back from MidAmerican to determine their waiver process before placing this tower in a park.

Chair Blaser commented that the enclosed fence is six feet high and the platform is six feet high, as well, so material could protrude from the platform and may need to be hidden. He asked if there was any thought to raising the height of fence. Planner Tragesser replied that 6 foot was the norm and that the landscaping would eventually cover. She commented that the fence was not necessarily a screening material but rather for security, but could be constructed higher if the Board felt it necessary.

Chair Blaser asked in response to Board Member Celsi's inquiry if there had been an application submitted to MidAmerican for a waiver of the deed restriction.

Gary Scott, Park & Recreation Director, provided a history of this request. The applicant applied to install a cell tower 2½ years ago at the park site north of Dahls at 50th Street. The Park Advisory Board rejected this request. It is now Mr. Scott's understanding that if you want a cell tower, between Valley West Drive and Interstate 35, there is only one location to locate the tower, and that would be on park property. The residents came to the Park Board two weeks ago with their concerns and asked that the previous denial of the park site at the 50th Street location be reviewed and also look at a change in the deed for the site at the north east corner of 39th Street and EP True Parkway which is the preferred site of the Park Board.

Mr. Scott continued that he has contacted MidAmerican to determine if they would agree to alter the restriction on the property deed by which this land was transferred to the City to allow for a cell tower only on the site. This request is still under review. He pointed out on a map the only two places the cell tower could be installed taking into consideration a fall zone around the tower. In regards to the east side of 39th Street at E.P. True Parkway, the Parks Department would prefer that it go here, but you would be exchanging one set of residents that would be unhappy for another set as the tower would be much closer to the townhomes located to the east. Also, if you considered a fall zone, which is not required by code, but seems a reasonable concern, between the tower and the property lines, you would not be able to install a tower anywhere on this property.

Mr. Scott summed up the situation stating that the proposed space would be preferable to that of the park at 50th Street as it is a marshy area, not mowed, and not used for park activities. His one concern would be the screening of the facility at ground level.

Board Member Christiansen asked if this current proposal would have the lesser impact. Mr. Scott agreed that once the Park Board became aware of this information, they would likely agree that this would be the best location as it would not take away from active recreation space. In addition, this location was less visually prominent than it would be if located at 50th Street.

Board Member Cunningham expressed that he was sympathetic to Board Member Celsi’s concerns, but he had concerns with the fall zone issue. Thus, if MidAmerican would grant a waiver, this may not make a difference to his decision due to his apprehension with the fall zone.

Moved by Board Member Cunningham, seconded by Board Member Pfannkuch, the Board of Adjustment adopt a resolution to approve the Permitted Conditional Use Permit to construct a 105 foot cellular monopole-style tower and associated equipment platform at 4101 E.P. True Parkway, subject to meeting all City Code requirements, regulations, and the following:

1. No lighting or signage, except to meet Federal, State, or other regulatory requirements shall be permitted.
2. The pole and enclosure will be regularly maintained to replace missing pole panels, landscape materials, painting, etc.
3. Prior to receiving a building permit, the applicant must execute a standard non-interference agreement, execute a lease with the City, and obtain utility easement and ingress/egress easements.
4. The applicant acknowledge future co-locations of cellular antennae and equipment shelters will require review and approval of a Minor Modification.
5. The applicant providing full sets of the permitted condition use permit site plan prior to the issuance of a building permit.

Vote: Blaser, Christiansen, Cunningham, Pfannkuch..... Yes
 Celsi..... No

Motion carried.

Item 3b – The Collar Club, 1832 Fuller Road – Approval of Permitted Conditional Use Permit to utilize the existing building for a doggie daycare with boarding services and future grooming services – A & A Properties – PC-003078-2016

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on May 13, 2016, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other

documents received at this public hearing.

Moved by Board Member Christiansen, seconded by Board Member Pfannkuch, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Corey and Erin Bird, The Collar Club LLC, 1832 Fuller Road, requested Permitted Conditional Use approval for a doggie daycare with boarding and future grooming services within an existing building located at 1832 Fuller Road. Mr. Bird stated that site was chosen because it was a stand-alone building in an industrial area with space to add a fence to the back. Dozens of facilities were considered, but this building needed no modifications besides removing a small portion of one wall to fit the proposed dog care needs. There is a large dog park located close by and only one other dog care facility in the vicinity. Mr. Bird commented that all requested easements and right-of-way dedication were provided as requested at the pre-application meeting.

Board Member Christiansen asked for an elaboration on the fenced in area to the back. Mr. Bird stated that it would be a six foot wooden privacy fence running 15 feet back from the east and the length of the building.

Mr. Bird agreed with all staff Recommendations and Conditions of Approval.

Dave Allbee, 1838 and 1834 Fuller Road, expressed concern with the noise that would be generated when the dogs were outside. He has a trailer and a body shop business, and that 95% of his body shop business was conducting estimating outside. A diagram was provided showing the location of his businesses. The fence would be located 15 feet from his office with roughly 30 feet between the buildings with a trailer used for storage located between the buildings. Also, he expressed concern with the urine and waste being generated. He commented that other than the front area, there was no green space. Mr. Allbee concluded by asking how the noise and waste would be controlled.

Chairperson Blaser then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Planner Portz added that the applicant had indicated they would like to offer grooming services at some point which would require a code amendment as grooming is not an allowed use in the General Industrial (GI) district. The applicant has submitted a request letter asking that the City amend the City Code to allow dog grooming in the General Industrial district. Staff will be proceeding with this Ordinance amendment soon.

Chairperson Blaser asked if there had been any discussion with the applicant regarding the nature of the fencing. Mr. Portz responded that the applicant had indicated that a six foot wood privacy fence would be installed. He believed that the applicant would be amenable to adding this as an additional condition of approval.

Mr. Bird addressed the concerns of his neighbor stating that, he did consider the front of the building for use by the dogs, but it is a grassy area which often just turn into mud pits. Concrete is a much preferred surface as it does not get hot in the summer nor does not turn into mud. He expressed that the dogs would never be unsupervised and that waste would be eliminated with the use of a spigot as it happened. The privacy fence would block the view for the neighbor and help in eliminating the noise.

Mr. Bird commented that the front location is the entrance and exit into the facility. The building was previously used as an office which would now be used as kennels. There is a warehouse storage area with an overhead door that opens into the fenced area in the back which would allow the dogs access. The building configuration meets their needs perfectly for a dog care business.

Board Member Celsi asked what would happen if pets refused to use the concrete. Mr. Bird stated that specific needs would be met by walking the dogs on a leash to the grass area in the front.

Moved by Board Member Christiansen, seconded by Board Member Cunningham, the Board of Adjustment adopt a resolution to approve the Permitted Conditional Use Permit to allow dog daycare with boarding services, with kennels and no outside runs (SIC 0752-02) and future dog grooming services, subject to meeting all City Code requirements and the following and with an additional Condition of Approval that a six foot privacy fence be constructed.

1. The applicant limiting outside activities to only that necessary for playtime and bathroom breaks and agreeing that the dogs shall not be outside unsupervised; and,
2. The applicant agreeing that dog grooming services may not be provided on-site until such time that the City Council formally approves of a City Code amendment to allow Dog Grooming Services as either a Permitted or Permitted Conditionally Use within the General Industrial (GI) zoning district.
3. The applicant installing a six foot privacy fence to the rear of the building to allow the dogs' outdoor access.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Item 3c – Hy-Vee Corporate Offices Wind Turbine, 5820 Westown Pkwy – Approval to add additional height and a revised location for the wind turbine – Hy-Vee, Inc. – MML1-003077-2016

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on May 13, 2016, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Cunningham, seconded by Board Member Christiansen, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Matt Carlile, Confluence, 525 17th Street, Des Moines, representing the applicant, requested approval to add additional height and a revised location for the wind turbine located at their Hy-Vee corporate office campus at 5820 Westown Parkway. As happens with construction, Mr. Carlile explained that the actual product model had been changed and now the height was different than what had previously been approved by the Board in May of 2015. The wind turbine will now be 2.2 ft higher that previously approved and placed 3.2 ft further to the north away from the south property line to meet all code requirements for wind turbines.

Mr. Carlile expressed agreement with all staff recommendations and conditions of approval.

Chairperson Blaser then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Planner Portz added that this request does meet the wind turbine section of City Code for height and setbacks.

Moved by Board Member Christiansen, seconded by Board Member Cunningham, the Board of Adjustment adopt a resolution for approval of a modification to a previously approved Permitted Conditional Use Permit to increase the height of a wind turbine to 45.5’ tall and 69.4’ from the south property line, subject to meeting all City Code requirements and regulations and the following:

1. As required with the original Permitted Conditional Use approval, the applicant shall work with the Fire Department on labeling what panels this wind turbine will power so electricity can be neutralized through an EPO button or turbine power off switch during an emergency.
2. As required with the original Permitted Conditional Use approval, the applicant shall work with the City Building Department to obtain any required building permits.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfankuch.....Yes
Motion carried.

Item 4 – New Business

Item 4a – Conditions of Approval discussion

Chair Blaser stated that this agenda item was in response to his draft resolution that was distributed at the last meeting regarding imposing conditions of approval. He noted that in the second public hearing item tonight for the Collar Club, the City Attorney provided analysis in the staff report regarding the circumstances under which requiring additional right-of-way can be an appropriate condition of approval. From his prospective, Chair Blaser expressed that he would appreciate receiving this feedback on future reports when there was a request for granting of right-of-way, easements, etc. to the City as it would give the Board a basis for justifying the request for additional infrastructure or property.

City Attorney Scieszinski added that there have been on-going discussions among City staff regarding the issue of exactions. He continued that City Code states that whenever there is a modification to an existing development or an application submitted for development, the applicant is required to bring the site into compliance with current code. Often there is no adequate nexus between the impact of the development to the exaction requested. Mr. Scieszinski continued that it is not always easy to determine the impact modifications to an existing development may have on existing infrastructure. He further stated that the City may have previously requested exactions based upon language in the code without considering the legal requirement that the exaction also may be related to and proportionate with the impact of the development on existing infrastructure. Going forward, the nexus and requested exaction needs to be adequately articulated by staff when imposing a condition of approval.

Item 5 – Staff Reports

There were no staff reports given. Currently, there are no items on the next Board of Adjustment meeting.

Item 6 – Adjournment

Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Pfankuch, seconded by Board Member Cunningham, the Board of Adjustment meeting adjourns.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfankuch.....Yes
Motion carried.

The meeting adjourned at 6:49 p.m.

Michael R. Blaser, Chairperson
Board of Adjustment

Kimberly Taylor, Recording Secretary

DRAFT