

**BOARD OF ADJUSTMENT MEETING MINUTES**

BOA\_AF\_06-17-2020

Chairperson Pfannkuch called to order the June 17, 2020, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. electronically as a Zoom session due to restrictions on public assembly.

Roll Call: Blaser, Christiansen, Cunningham, Pfannkuch.....Present  
Board Member Stevens joined the meeting at 5:31 pm..... Present

**Item 1 – Consent Agenda**

**Item 1a – Minutes of May 6, 2020**

Chairperson Pfannkuch asked for any questions or modifications to the meeting minutes of May 6, 2020.

Moved by Board Member Blaser, seconded by Board Member Cunningham, the May 6, 2020 meeting minutes were approved as presented.

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

**Item 2 – Old Business**

There were no Old Business items.

**Item 3 – Public Hearings**

There were no Public Hearing items.

**Item 4 – New Business**

There was one (1) New Business item.

**Item 4a – Variance v. Special Exception –**

Linda Schemmel, Development Coordinator introduced Jessica Spoden, Assistant Attorney for the City of West Des Moines. Ms. Schemmel noted this discussion is in response to request from the Board.

Jessica Spoden summarized her experience and education as a planner, instructor and attorney, working with the Cities of Ames, Des Moines, West Des Moines and Iowa State University.

Ms. Spoden presented information differentiating between special exception circumstances and variance prerequisites for approval. She informed the Board that there are 4 requirements which must all be met in order to approve a variance, and that special exceptions have fewer requirements. It is being proposed by Development Services Staff and the City Attorney’s office that City Code be amended to allow of approval of special exceptions, in order to meet the intent of providing homeowners with as much flexibility as possible where variance criteria cannot be met.

Attorney Spoden informed that State Code is lacking in definitions with regard to variances. Ms. Spoden explained the application of Iowa Code 414.7 and 414.12, with regard to the powers exercised by the Board of Adjustment. The term “unnecessary hardship” has been defined by case law and must prove that the land will lose all essential value if variance is not granted. She noted that this is a very high standard to meet.

Board Member Cunningham questioned whether the three conditions were required to be met for a

## BOARD OF ADJUSTMENT MEETING MINUTES

variance to be granted, or just one of the three. Ms. Spoden responded that all three would be required, which makes it very rare for a variance to be granted.

Board Member Cunningham raised the question of application to residents of lots in the Valley Junction area where the circumstances might be considered unique and not of the owner's making. Ms. Spoden affirmed that this area is a good example of a situation where a reasonable person would find in the same manner, and the Board would not be acting in an arbitrary, capricious, or abuse of discretion manner.

Board Member Cunningham questioned application of the reference "unique circumstances not of the owner's making" when the owner knows the condition of the neighborhood when purchasing the lot, which may not meet current zoning setback requirements. Ms. Spoden responded that it depends on what the Board would consider the "neighborhood", whether it is limited to the Valley Junction area, or if considered a broader area; it would be factually based. If the goal of the Board is wanting a lesser standard similar to one utilized by the City of Des Moines, then the lesser standard would be met. Board Member Cunningham concluded that the Board has considerable discretion, when applying a rational basis, to determine how broadly they are going to interpret these terms. He believes the fight is often over the test and not the application of the criteria with regard to the particular circumstance.

Attorney Spoden provided three examples for comparison of meeting criteria for special exceptions or variances. She then explained how Special Exceptions are defined and their application to land uses. Ms. Spoden provided language being used for the past 20 years by the City of Des Moines which has been well-received and not challenged. The term "practical difficulties" is less burdensome to meet than "unnecessary hardship." She noted that impact to neighbors is considered. Whether the homeowner has alternative possibilities to the exception is the next standard. She noted that the use itself must be permitted and an exception to the use could not be granted. Ms. Spoden stated she would provide the City of Des Moines Code and the Presentation PowerPoint to the Board following the meeting, for Board review.

Board Member Cunningham clarified that the City of West Des Moines code does not currently provide for special exceptions. Attorney Spoden affirmed that to be true. Board Member Cunningham concluded that City Council would have to approve use of special exceptions as a change to City code. Ms. Spoden agreed, stating Development Services Staff wanted to present this to the Board to gauge approval before proceeding to City Council with a code change to allow special exceptions. She concluded with a final slide summarizing that practical difficulties are easier to prove and are more likely the standard average citizens expect to have to meet.

Chair Pfannkuch stated that she has utilized the special exceptions rule while working on projects in the City of Des Moines and voiced her approval of use in West Des Moines.

Board Member Christiansen asked who sits on the Development and Planning Subcommittee. Development Attorney Spoden responded that Council Members McKinney and Hardman are the committee liaisons. She added that bringing the item to Subcommittee allows the opportunity to more fully present the background information for the Code amendment.

Board Member Blaser summarized that he is viewing the Special Exception as "Variance Light," asking if that is a fair assessment. Chair Pfannkuch affirmed that to be very fair. Board Member Blaser voiced his support of the special exception, stating he felt it provides the Board with a lot more flexibility to do the right thing by the folks coming in asking for this type of request.

Board Member Cunningham agreed, and voiced his support, noting that as a practical matter they

## **BOARD OF ADJUSTMENT MEETING MINUTES**

may have been applying these standards in the past. He concluded that he would appreciate the flexibility this would provide the Board.

Board Member Stevens noted that the variance standard pertaining to proof that the owner would be deprived of all beneficial use of the land would almost never apply, which was affirmed by Board Member Cunningham and Ms. Spoden.

Board Members unanimously voiced approval for this recommendation. This proposal will next be presented to the Development and Planning Council Subcommittee.

### **Item 5 – Staff Reports**

There were none.

### **Item 6 – Adjournment**

Chairperson Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Blaser, seconded by Board Member Cunningham, the Board of Adjustment meeting adjourned at 6:08 pm.

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Angie Pfannkuch, Chairperson

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Jennifer Canaday, Recording Secretary