

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_06-21-2023

Vice Chairperson Blaser called to order the June 21, 2023, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa, and electronically through Zoom.

Roll Call: Blaser, Christiansen, Cunningham.....Present
Pfannkuch, Stevens.....Absent

Item 1 – Consent Agenda

Item 1a – Minutes of June 7, 2023

Vice Chairperson Blaser asked for any corrections to the meeting minutes of June 7, 2023. Hearing none, Vice Chairperson Blaser declared the minutes approved as presented.

Item 2 – Old Business

There were no Old Business items.

Item 3 – Public Hearings

Item 3a – 1065 SE Browns Woods Drive – Variance to accommodate ground mounted solar panels – Lynnae S. Marty Hentzen – VAR-006006-2023

Vice Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on June 2, 2023, in the Des Moines Register.

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

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent

Motion carried.

Associate Planner Kate DeVine stated that she received two phone calls in support of the variance request and one not in support of the request.

Lynnae Marty Hentzen, 1065 SE Browns Woods Drive, stated that she signed a contract for a solar array to be put on her roof but found out in December of 2020 that they couldn't be located on her metal coated roof, even though she had been assured by the roofing contractor that they could be located there. She found an area in her yard to install the solar panels instead, which would be buffered by Browns Woods Drive. Several trees on her property were removed to allow the arrays to be installed. She intends to plant additional trees in place of the ones that were removed. The Weitz, neighbors to the west are in support of her proposal. Ms. Hentzen concluded that she is an advocate for sustainability and is requesting that the city consider her request a unique situation and approve the variance request.

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Board member Cunningham asked the applicant to clarify her proposal and variance request in further detail.

Ms. Hentzen explained that the panels would be located off to the side in the tree area but not in front of the house. The panels will be located where the trees were removed on her property.

Jeremy Heffelfinger, 1Source Solar, 1920 3rd Avenue SW, Altoona, added that he visited the property numerous times and that the panels will be located where they will receive the most sun exposure. Other locations were considered but there was not enough sun. The proposed location is the most suitable.

Development Coordinator Linda Schemmel explained that the proposed location of the solar panels is in the front yard, noting that the applicant's house faces the lane she uses for entry and that is why she is referring to the south yard as the side yard. The street frontage coincides with Browns Woods Drive and by code, her front yard is the south yard. Lynnae's variance request covers two regulations; 1) an overall regulation for locations of accessory structures in the front yard; and 2) regulations in the solar ordinance requiring solar structures to be placed behind the rear plane of the house. Should the variance request be approved, once the applicant goes through the building permit review process, staff will ensure that the solar arrays meet the front yard setback requirements.

Ms. Hentzen passed around to the board a photo that indicates a better location of where the solar panels would be.

Cunningham clarified that the reason for the variance is that they would be located in front of the house and not on the side of the house.

Mr. Heffelfinger described how the panels would be laid out on the property as well as the equipment that would be used to place them on the ground. He also referred to the number of proposed panels and how high they would be stacked.

Development Coordinator Schemmel added that current height regulations for detached solar panels is 10 feet. The height of the structure would be considered at the time of the building permit review.

Randy Sinnard, 2045 SE 11th St, briefly stated concern with the removal of additional trees but that he has no issue with the trees that have already been removed. He asked why the barn area wasn't considered a possibility.

Mr. Heffelfinger responded that the location of the barn was an option. However, a large tree is located in front of the barn that would shade most of the array. To place a solar array on the roof would not be as efficient nor economical possibility. Peak solar hours are between 10 AM and 2 PM and in order to take advantage of that if the panels were to be located near the barn, additional trees would need to be removed.

Tom Swartwood, 1105 SE Browns Woods Drive, commented that they have no objections to the solar array request as long as the applicant locates the array in the corner as outlined in the photo, as opposed to the diagram that was provided earlier. He concluded that he feels that it would be an enhancement to the applicant's property as well as being appropriate for the neighborhood.

Board member Christiansen asked of the applicant if they would be removing any additional trees. Ms. Hentzen commented that when the roof was a consideration, three were removed and other

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trees were trimmed. Trees that have been removed she does intend to replace.

Board member Cunningham asked for clarification of the area that the solar array panels will be encompassed in.

Mr. Heffelfinger provided specific details of the panels noting that there will be seven piles holding a total of 34 panels, or two rows of 17. The entire area will encompass approximately 58 feet.

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

Associate Planner DeVine referred to the memos that were placed on the dais and added that when the building permit is reviewed staff will ensure that they meet the front yard setback.

Development Services Coordinator Schemmel added that both sections of code have been outlined in the staff report for the variance request.

Board member Cunningham inquired as to why this request was considered a variance as opposed to a zoning exception as he has concerns from a legal standard in that the owner has been deprived of the beneficial use of their property and that the legal standard has been met.

Development Coordinator Schemmel responded that the applicant's request does not fit the criteria for a zoning exception.

Board member Cunningham stated concern with some residents being able to locate solar panels on the ground and others locating them on their roofs. His point of contention is with the standard of undue hardship of being deprived of all beneficial or productive use of the property.

Development Coordinator explained the original intent of the requirement to place the panels behind the rear portion of the house because a solar array is considered an accessory structure in use and appearance to the primary structure. The concern when the ordinance was drafted is that the solar array is a large piece of equipment and would not be accessory in nature and appearance if located in the front of the house. However, this property is unique because it has a buffer of heavy timber between the public road and the neighbors, screening the view of the array.

Board member Cunningham clarified if the major concern staff has is the address of the property and what is considered the front of the house and if any city regulations prevent them from placing the panels in the side yard of the property. Development Coordinator Schemmel responded that the front and side yards are determined by where the street is located.

Vice Chairperson Blaser reopened the public hearing to hear additional testimony.

Ms. Hentzen commented that her lane is shared with one other person and that the Weitz have a lane next to that and Sinnards have a lane after that. She does understand the concern for removing additional trees on the property. She was informed by the roofing contractor that the solar panels would fit on the roof. She explained that a lot of money has been spent on a new roof to accommodate the solar panels as well as the removal of several trees. Other areas on the property had been considered but proved to not be useful.

Board member Cunningham asked that at what point in the process did Ms. Hentzen realize that a variance would be necessary.

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Ms. Hentzen indicated when it was determined that the panels would not fit on the roof and then 1Source had noted that they could place them on the ground. 1Source had been contacted by the City and were informed that they could not put the panels where proposed.

Brief discussion was held regarding how electrical power is provided to the applicant’s property.

Board member Christiansen suggested the possibility that the applicant could request a deferment of her request to two weeks to allow additional time for discussion between her and city staff to discuss alternatives with staff since a full Board was not present tonight.

Development Coordinator Schemmel explained that staff did discuss with Ms. Hentzen other options for locating the panels on her property. Staff could ask the City Council for an amendment to the ordinance to allow panels in front yards. However, when that issue was before the Council the first time, having ground mounted panels was controversial and it was a deliberate decision to place them behind the dwelling to assure they remained accessory in nature. To install on the roof is more acceptable because the installation blends in better. She concluded that she is unsure as to whether the Council would support the allowance of placing them in the front of the house.

Ms. Hentzen clarified if the front of the house was the issue with the location of the panels.

Development Coordinator Schemmel stated that is how staff defines a front yard is in the subdivision ordinance. It is defined as what the yard is along the street.

Board member Cunningham questioned that if the applicant does not wish to table or withdraw the item, does the Board have authority to table the item and decide at a later time.

Ms. Hentzen stated that she would be in agreement with deferring the item.

Development Coordinator Schemmel explained that it would be preferred to defer the item to a date certain, otherwise, it would need to be re-noticed and re-published in the paper.

The Recording Secretary indicated that the next BOA meeting would be July 17th.

Ms. Hentzen asked the Board to defer her item until July 17th to allow for additional testimony and other board members to be present.

Moved Board member Christiansen, seconded by Board member Cunningham, the Board of Adjustment continues the variance request until the July 17, 2023, meeting.

After brief clarification, the motion was amended to reflect the correct meeting date of July 19th and not July 17th.

Moved Vice Chairperson Blaser, seconded by Board member Cunningham, the Board of Adjustment continued the variance request for 1065 SE Browns Woods Drive to the July 19, 2023, meeting.

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent
Motion carried.

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Item 3b – Wihlm Residence, 4105 Vividell Circle – Variance of the 15’ foot setback requirement to accommodate the construction of a six (6) foot privacy fence – Jolli Wihlm – VAR-006080-2023.

Vice Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on June 9, 2023, in the Des Moines Register.

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

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent
Motion carried.

City Planner Kara Tragesser stated that no additional information has been received other than a memo that was placed on the dais that included a photo representation of the request.

Jolli Wihlm, 4105 Vividell Circle, stated that her property is unique as it has two sidewalks and two access drives. She would like to install a 6’ privacy fence in the backyard but prefers not to set it back 15’ deep as it would leave an area on her property that is unusable. She does not have any hardships other than a 4’ fence may not contain an animal, depending on the type of dog. Regarding dense planting, she previously had a hedge on her property, but people still cut through her property. If she were to provide additional vegetation, it would impede into the sidewalk area making it harder for people to walk by. Ms. Wihlm is seeking a variance request for privacy from the apartment complex across the street, dog walkers in the neighborhood, and traffic from Valley High School down the street.

Board member Cunningham asked the reasoning for not aligning her fence with the neighbor’s and if she is requesting to eliminate the setback entirely to locate the fence where the hedges once were.

Ms. Wihlm stated that she would be happy to locate the fence where the hedges were as they were approximately three feet back from the sidewalk. Although she initially requested zero feet, she is willing to negotiate distance but would prefer that it not be 15 feet back.

Board member Cunningham clarified with the applicant that her variance request is for a six-foot fence at the property line vs. a four-foot fence.

Ms. Wihlm replied that the variance request is for privacy issues due to the apartment complex across the street and as a noise buffer. She concluded that the request is not for zero feet or 15 feet. A three-foot fence setback would address the tunnel vision.

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

Kara Tragesser, Development Services Planner, stated that the staff report spoke to the zoning exceptions. There is an option to go from 0 to 15 if findings are appropriate. Ms. Wihlm could withdrawal her variance request and apply for a zoning exception for 7.5 feet, or 50% of the rear yard setback.

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Board member Cunningham indicated that if the item went through as a variance request, he would deny it as the applicant would not meet the hardship requirements.

Brief discussion was held regarding variance requests in the past being approved with setback issues.

Board member Cunningham clarified that the request before them is a variance to reduce the setback from 15 feet to zero feet. If the Board should deny the variance, he inquired if the applicant could return to the Board of Adjustment for a zoning exception. Planner Tragesser indicated that it would not prevent her from doing that.

Board member Christiansen commented that although it is not a requirement of them to negotiate with the applicant, they do have obligation to let them know what they could do. He suggested re-opening the public hearing and asking the applicant if she'd like to defer the item for two weeks.

Board member Cunningham stated that he does not feel that the item should be deferred but that she's not precluded from coming back and asking for a special exception. If she continued with the variance request, he would vote to deny it. She could then work with staff regarding her options and come back at a later date, or withdrawal it as well.

Planner Tragesser stated that the applicant's neighbor was able to place a fence on the property line as it was installed in 2007 or before. In 1996, the city adopted a zoning code to allow fences to be on the property line, but it, the ordinance, has since changed. She then explained to the applicant that her variance request would most likely be denied. If she is comfortable with 7.5 feet, she could pursue a zoning exception.

Jolli asked for clarification between a zoning exception and a variance request, to which Planner Tragesser explained that variance request findings are harder to prove. Ms. Wihlm asked why she wasn't provided that option in the beginning.

Planner Tragesser explained that she did discuss with the applicant other options and the applicant had stated that she wanted to pursue the variance request. Ms. Wihlm stated that she does not recall any specific discussions regarding other options that might have been available to her and that she did not realize that there was a process for a zoning exception.

Development Coordinator Schemmel added that the Board would either need to vote for denial or withdrawal in order to apply for a zoning exception; however, the zoning exception would not provide her the full 15 feet. If the applicant is comfortable with 7.5 feet, she suggested that the applicant withdrawal her variance request and apply for a zoning exception. If the applicant does not want the 7.5 feet, there would be no reason to apply for the zoning exception. The applicant could request a continuation to the next meeting to allow herself and staff additional time to meet and review her options.

Ms. Wihlm clarified that the zoning exception is for 7.5 or not at all.

Planner Tragesser added that there may be other options for her request and suggested Ms. Wihlm and staff could meet to discuss.

Ms. Wihlm requested that the Board defer her variance request to the July 19th meeting to allow her additional time to meet with staff to discuss other possible options for a variance request.

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Moved by Board Member Christiansen, seconded by Board Member Blaser, the Board of Adjustment continued this item to the July 19, 2023, meeting.

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent
Motion carried.

Item 3c – Cellular Communication Tower Use, 7502 Raccoon River Drive – Approval to establish a 130-foot-high stealth monopole communications tower – GSS, Inc. – PC-005972-2023

Vice Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on June 9, 2023, in the Des Moines Register.

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

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent
Motion carried.

Ross Kerno, Brown Winick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, stated that he was counsel for the landowner, RRK, LLC.

Humberto Aguirre, 6255 Beechtree Drive, West Des Moines, explained that he is with GSS, Inc., on behalf of US Cellular, is seeking to construct a 130-foot communications tower at 7502 Raccoon River Drive. The purpose of the tower is to increase coverage in the area, specifically for the MidAmerican RecPlex and to offload capacity for other towers in the area for better cell phone reception. They have worked with staff regarding the side yard setback variance and were before the City Council to zone the property agricultural/open space and are at this time requesting a permitted conditional use permit.

Board member Cunningham asked if they agreed with staff’s recommendations and conditions, to which they replied that they did not have any issue with either of those.

Mr. Kerno briefly stated that although the variance is pending in District Court, he does not believe that the permitted conditional use permit request would have any effect on that because the construction of the tower could not begin until that issue is settled.

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

Kara Tragesser, Development Services Planner, stated that her staff report stands as written.

Moved by Board Member Cunningham, seconded by Board Member Christiansen, the Board of Adjustment adopted a resolution to approve the conditional use permit, per staff recommendations.

Vote: Blaser, Christiansen, CunninghamYes
Pfannkuch, Stevens.....Absent

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Motion carried.

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

There were no staff reports.

Item 6 – Adjournment

Vice Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Christiansen, seconded by Board Member Cunningham, the Board of Adjustment meeting adjourned at 6:54 p.m.

Michael Blaser, Vice Chairperson

Michelle Riesenber, Recording Secretary