

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_07-19-2023 –(due to technical issues, no audio is available for this meeting)

Chairperson Pfannkuch called to order the July 19, 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, Cunningham, Pfannkuch, Stevens.....Present
Christiansen.....Absent

Item 1 – Consent Agenda

Item 1a – Minutes of June 21, 2023

Chairperson Pfannkuch asked for any corrections to the meeting minutes of June 21, 2023.

Commissioner Cunningham requested a correction to the language of the sixth paragraph of page 3 of the minutes, replacing the first use of the word Standard with Standpoint, and inserting the word “not” twice in the phrases “the owner has (not) been deprived,” and “does (not) fit the criteria.”

Chair Pfannkuch declared the minutes approved as corrected.

Item 2 – Old Business

There were 2 Old Business items.

Item 2a – 1065 SE Browns Woods Drive – Variance to accommodate ground mounted solar panels – Lynnae S. Marty Hentzen – VAR-006006-2023 (continued from June 21, 2023)

Chair Pfannkuch and Commissioner Stevens stated for the record that they had reviewed the minutes from the previous meeting and were prepared to discuss and vote on the continued item.

Chairperson Pfannkuch asked the Applicant for additional comments for this item.

Lynnae Marty Hentzen, 1065 SE Browns Woods Drive, was present with her solar contractor, Jeffrey Heffelfinger, 1Source Solar, 1920 3rd Avenue SW, Altoona, to request a variance to allow the ground mounted panels. She highlighted that her property is unique and located in a unique neighborhood. Ms. Hentzen pointed out that her home is placed on the five-acre lot in such a way that the area defined as “front yard” is not located in front of the home. She provided that she has replaced trees at a ratio of 3 to 1 and has planted an additional 7 trees since the previous Board of Adjustment meeting, with the intent to fully screen the ground mounted solar units from viewing by the neighbors. Ms. Hentzen emphasized the support from her neighbors and their shared interest in utilizing sustainable resources.

Chair Pfannkuch asked if there were any questions for the applicant; hearing none, she closed the public hearing.

Kate DeVine, Development Services Associate Planner, noted that she had provided more information in her Staff Update regarding the front and rear setbacks, however the positions held by Staff and the Applicant haven’t changed.

Commissioner Cunningham questioned whether Staff supported the placement of the structure in

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the defined front yard with the additional screening provided by Ms. Hentzen, and whether the Hentzen's side yard was legally the front yard. Assistant City Attorney Grove responded that Staff do not support the placement in the front yard and addressed the hardship requirement for the variance denial creating a "no reasonable return", meaning that the property would have zero value. She added that the hardship was required to not be of the owner's own making. Ms. Grove pointed out that allowing the variance would have a significant impact on many other properties through-out the City.

Commissioner Cunningham commented that the "reasonable use" clause means the property would not have any use.

Commissioner Stevens questioned language in the Staff findings which appeared to state that Staff agreed that the findings had been met pertaining to the unnecessary hardship. Attorney Grove responded that Staff wanted to provide as much information as possible for the Board to choose their findings; and noted that Staff support the concept of Sustainability. She added that there are other options on the property, although the owner may not support those options.

Commissioner Stevens commented that those options come at additional cost to the Hentzen's. Attorney Grove replied that cost to the Applicant is not a factor for determining if the legal standards have been met.

Commissioner Cunningham stated that the Staff Findings didn't make sense to him and asked what the argument was regarding renewable energy. Attorney Grove replied that this is an effort that is being pushed, which the Board could take into consideration, however some lots may have a lot less lot size and no other placement options.

Commissioner Cunningham commented that this is a lovely, marketable home, and denial of the variance wouldn't make the property meet the standard of having no use. He noted that he didn't understand Staff's argument, questioning whether they as a Board were being asked to support solar use. Attorney Grove reiterated that Staff were trying to provide as much information as possible for the Board to create their own findings. Commissioner Blaser inserted that perfection isn't always the right answer.

Commissioner Stevens asked whether this situation would qualify as a zoning exception. Attorney Grove replied that it would not, as Zoning Exceptions were applied very specifically to accessory structures. Development Coordinator Schemmel inserted that this application pertains to variance request as the specific request is not included in the scope for Zoning Exceptions. There are two separate variance requests, one is generic to accessory structures, where the Code prohibits the placement of an accessory structure in front of a primary structure. The second variance request applies to the solar energy systems, as ground mounted solar structures are required to be placed behind the rear plane of a home. The intent for the regulations is for accessory structures and ground mounted solar to be secondary in use and appearance to the primary structure for which the property is zoned.

Commissioner Stevens questioned where the information was provided supporting the Hentzen's comment that the neighbor's previously voiced objection had been satisfied. Associate Planner DeVine stated that the objection had been at the previous in-person meeting and the City has no written record that the complainant believes the objection has been addressed.

Commissioner Cunningham inserted that the concern had been regarding the removal of trees and that Ms. Hentzen had provided information regarding replacing trees and creating a buffer.

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Commissioner Stevens clarified that on the site plan, Zoning does not allow ground mounted solar arrays in the front yard, therefore this request is against the law. Ms. Schemmel amended that it is against the city's ordinances. Commissioner Stevens asked whether the Board could make an exception for something that was against an ordinance. Attorney Grove stated they could not.

Chair Pfannkuch asked whether the definition of front yard area could be changed. Attorney Grove responded that it could not.

Commissioner Stevens asked if any structure could be placed in front of a residence. Attorney Grove stated a mailbox could be. Commissioner Cunningham added that trees could be.

Commissioner Stevens asked if there could be any exceptions. Attorney Grove stated there were none she could think of. She added that the City has had other requests for structures in the front yard which have been denied.

Commissioner Stevens asked what the Lentzen's other options would be. Development Coordinator Schemmel stated that the original intent had been to install a roof-mounted solar array, however the Letnzen's were informed the shingles were not compatible. The roof of the barn was considered; however, it would not support the array. There is another potential location on the lot, which is further from the house, resulting in additional cost. She noted that this is a five-acre lot, therefore there are other options.

Commissioner Stevens noted that locating the array near the barn could prohibit the use as a horse farm. Attorney Grove responded that there had been no evidence provided to support that assertion, and that the property was not being used as a commercial horse farm. She stated that the horses being kept on the primary were a secondary use.

Commissioner Stevens referenced a note in the minutes regarding the potential impact to the horses. Attorney Grove stated that the Applicant is not a license veterinarian, nor had she provided any support for the statement.

Commissioner Stevens asked how the application had proceeded to this point. Commissioner Cunningham replied that it had been decided at the first public hearing that it might be better to have more voting members present for the decision. He asked what would happen if the Board split on their vote. Attorney Grove responded that if there was a split vote 2-2, either to approve or deny, the motion would fail.

Commissioner Stevens asserted that the Board is not authorized to break the law.

Chair Pfannkuch reopened the Public Hearing for the applicant to add comments, asking that they be brief.

Ms. Hentzen stated that they had done a great deal of research of the West Des Moines zoning code and recommended amending the Residential Estate lots to allow ground mounted solar in the front yards, as this zoning classification did not represent a large majority of lots. She added that Residential Estate lots contained a number of unique uses not allowed in other neighborhoods, including agricultural use. She requested allowing the variance for this type of lot. Ms. Hentzen asserted that she has overwhelming support from her neighbors and requested that the City make it an easier process for solar to be implemented in this one area. Ms. Hentzen responded to the comment about using other parts of the five-acre lot, noting that it would require the removal of trees to do so, and that placing the solar structure near the barn entrance would eliminate the corral area.

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Chair Pfannkuch closed the Public Hearing and provided comments. She noted that variances such as this are very hard to decide. The Board had requested the creation of Zoning Exceptions to assist in the approval of requests which might not meet the burden of hardship. She noted that while this is a unique property, it doesn't meet the criteria to be considered as a Zoning Exception, therefore the Board must consider it under the variance requirements.

Commissioner Blaser concurred with Chair Pfannkuch's statements.

Attorney Grove pointed out that in her last remarks, Ms. Hentzen was requesting for a change to Code, which would require approval by the City Council. She noted that there are Residential Estates lots which are under one acre, and to allow ground mounted solar in the front yards of those lots would have a significant impact. She added that Residential Estate lots are treated differently by allowing some agricultural animal uses by approval but must meet minimum lot sizes. She concluded that the Board does not have the authority to amend the Ordinance.

Commissioner Cunningham commented that City Council could change it. Attorney Grove replied that Council could, however she would be very surprised if they did.

Commissioner Stevens asked if the City is doing anything to make the process of approving solar installations any easier. Development Coordinator Schemmel informed that the Solar ordinance was created seven years ago, and since then there have been only a handful of applications for ground mounted units. The original ordinance did restrict generating capacity for residential applications. Over time, roof mounted arrays were observed to blend in better than ground mounted, and the restrictions for power generation were removed as applied to roof mounted units. Solar energy systems are now allowed in all zoning districts, with applicable setbacks applied. She concluded that the ordinance allows more options for installation of solar energy systems than most of the metro cities.

Commissioner Cunningham requested amending the Board Response to Staff Findings 2 and 4, noting that denial of the request would not result in lack of reasonable use of the property, and that the Standard for hardship is not met.

Commissioner Stevens asked about Ms. Hentzen's having spent \$77,000 and Staff comments saying she had met the requirements. She asked why the Board should muddy the decision with the Staff Findings this way.

Commissioner Cunningham replied that he had great sympathy for the amount of money spent, however denial of the variance would not impact use of the property. He added that was why the Board pushed for Zoning Exceptions as an option.

Commissioner Stevens asked about the notes regarding the applicant meeting the variance standards. Attorney Grove clarified that staff presented facts applicable for the Board to consider, without forming a conclusion. She added that the Board couldn't just stay the request was illegal, they would have to list findings.

Commissioner Stevens asked if the Board had ever approved something which was not legal. Attorney Grove replied that they had, however admonished that this didn't mean they should. She added that she would not advise them to do so.

Commissioner Cunningham added two comments. He noted that at the end of every hearing, the applicant is advised they have the right to appeal, whether the Variance is granted or denied. He

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added that the Board has had that happen. He stated that at least one time, the Board had applied special criteria rather than legal, but concluded that he agreed it was not a good idea.

Chair Pfannkuch provided that maybe the City could consider allowing the installation of solar units as a Zoning Exception if the ordinance were changed by City Council.

Chairperson Pfannkuch asked for continued discussion or a motion and a second for this item.

Moved by Board Member Blaser, seconded by Board Member Stevens, the Board of Adjustment adopted a resolution to deny the variance request based on Board findings. Commissioner Cunningham amended the motion to note that variance requirements two and four had not been met by the applicant, as the property will still yield a reasonable return without the granting of the variance, and that granting the variance will not result in Substantial Justice being accomplished.

Vote: Blaser, Cunningham, Pfannkuch, StevensYes
Christiansen.....Absent

Motion carried.

Item 2b – Wihlm Residence, 4105 Vividell Circle – Variance of the 15’ setback requirement to accommodate the construction of a six (6) foot privacy fence – Jolli Wihlm – VAR-006080-2023 (continued from June 21, 2023)

Chair Pfannkuch noted that there was a memo from the Applicant requesting the withdrawal of item 2b.

Moved by Board Member Stevens, seconded by Board Member Blaser, the Board of Adjustment adopted a resolution to accept the withdrawal of this variance application.

Vote: Blaser, Cunningham, Pfannkuch, StevensYes
Christiansen.....Absent

Motion carried.

Item 3 – Public Hearings

There were no Public Hearing Items.

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

There were no Staff Reports.

Item 6 – Adjournment

Chairperson Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Stevens, seconded by Board Member Cunningham, the Board of Adjustment meeting adjourned at 6:14 PM.

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Angie Pfannkuch, Chair

Jennifer Canaday, Recording Secretary