

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_04-03-2024

Chairperson Pfannkuch called to order the April 3, 2024, 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, Davis, Pfannkuch.....Present
Cunningham, Stevens.....Absent

Item 1 – Consent Agenda

Item 1a – Minutes of March 20, 2024

Chairperson Pfannkuch asked for any corrections to the meeting minutes of March 20, 2024. Hearing none, Chair Pfannkuch declared the minutes approved as presented.

Item 2 – Old Business

There were no Old Business items.

Item 3 – Public Hearings

Item 3a - 805 S 100th Street, Variance of the rear yard setback and development perimeter setback to accommodate a 15-foot-deep louvered pergola - Jeff Kafer – VAR-006332-2024 (Deferred from March 20, 2024)

Chairperson Pfannkuch 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 **March 11, 2024**, in the Des Moines Register.

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

Vote: Blaser, Davis, Pfannkuch.....Yes
Cunningham, Stevens.....Absent

Jeff Kafer, 805 S 100th Street, presented his request for a variance to allow the construction of a pergola over his existing patio. He informed that during purchase of the home, he was told that his property extended 7 feet beyond the patio, and later discovered that he only has 18 inches. The developer behind them removed trees as part of a new construction project, leaving his previously shaded patio with no coverage. He is asking for 5 ½ feet of variance in order to build a pergola for shade over the patio.

Board Member Blaser asked if the neighbors have something similar. Mr. Kafer replied that there are others within accessory structures built within feet of the development property. He added that the developer left about 20 feet of trees and assured the Kafers that there will be a buffer between the developments. The pergola will not prevent a sight line, or impact run off. It will improve the look of the area. Mr. Kafer stated that it was suggested that he could put up a 9’ pergola but that would put a post in the center of the patio, making it non-functional.

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Board Member Blaser commended Mr. Kafer for his soliloquy, stating he understood the problem.

Mr. Kafer concluded that he wants to follow the rules and believes their request is reasonable, that the pergola will increase their property value.

Daniel Aten, 9939 Alexander Circle, introduced himself as president of the HOA and declared the HOA's support of Mr. Kafer's variance request as it was consistent with the neighborhood as this is the 6th pergola planned to be built. He informed that the HOA owns another 30 feet behind the Kafer home which they are willing to consider allowing them to use part of. As these pergolas have increased the property value and the taxes, he believed the additions are of value to the residents and the City. Mr. Aten added that Alexander will become a through street with the next development, and discussed the buffer zones between the properties, established to handle run off.

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

Development Coordinator Linda Schemmel provided Staff comments on behalf of Planner Kara Tragesser, beginning with a brief explanation that the variance request was to waive two setback requirements, and the zoning exception would only allow the waiver of one setback. She added that the first action would apply to both setbacks. Regarding procedure, the Board would need to deliberate on the variance request first. If the variance was denied, the zoning exception could be considered, however it would not give as much relief as the applicant was requesting.

Ms. Schemmel stated that per code, the patio can be one foot off the property line, a deck under 30" would have a five foot setback, and any structure with a cover overhead would have a 7 foot setback from the property line.

Regarding the back part of the lot, she informed that there is a 35' development setback for multi-family developments, and that this overlaps their footprint lot. Code has been amended since the time of the platting of this site so that these overlaps no longer occur. The Variance request to allowing for up to a 6-foot encroachment into the setback would bring the pergola right to the edge of the patio.

Ms. Schemmel stated that staff has found that the variance criteria of finding a hardship resulting in the property failing to yield a reasonable return. had not been met.

Chair Pfannkuch commented that the development setback is the issue. Ms. Schemmel responded that the overlapping setbacks creates the problem. Both setbacks are required.

Chair Pfannkuch clarified that development setbacks do not allow anything to be built on them. Ms. Schemmel confirmed that this is a no build setback.

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

Chair Pfannkuch commented that variances are hard. With this request, the requirement for a hardship is not met; and the perimeter setback does not allow a structure built on it.

Board Member Blaser stated that he understood, but that he would like one or more of the absent Board members to weigh in.

Development Coordinator Schemmel pointed out that once the Board takes action, it is hard to back up. The applicant would need to request a continuation of their item.

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Chair Pfannkuch reminded the Board that Board Member Cunningham would not be able to vote on this item as he has a conflict of interest and already indicated he would need to recuse himself.

Mr. Kafer responded that he understood, as he serves on two HOA boards. He noted his willingness to compromise to 4 feet, which would almost be to the edge of the concrete but would still make the patio usable. He asserted that 9' would not make the patio useable. Mr. Kafer expressed his frustration that the developer did not disclose this to them at the time of the sale, adding that the City should require that disclosure. He added that he would be ok waiting to have the 4th Board Member weigh in. If the full 6' was not allowed, 4' would be acceptable.

Chair Pfannkuch pointed out that this would still place it in the development setback no build area.

Ms. Schemmel stated that the zoning exception would provide a 10 foot depth for the cover off the rear of the home. She informed that the City asked the developer to show each lot so Staff could verify setbacks for proposed outdoor areas. The unit plan that was provided to the City for this lot was not what was built.

Chair Pfannkuch questioned whether the 35' required setback is City code or developer PUD. Ms. Schemmel responded this is a City-wide code.

Board Member Blaser commented that the Board wants to do the right thing, and make it work with Staff requirements. He suggested it might be better to consider with another member or two, adding that he would feel more comfortable with staff's advice and another member present.

Chair Pfannkuch indicated that she would be gone on April 17, and that Board Member Cunningham would not vote on this item. She added that she didn't think she would change her vote in two weeks, commenting that the Board has only granted three variances in her time served, and one was overturned by the Courts. She noted that the two feet less is better but is still in the perimeter. Chair Pfannkuch stated the Board could vote that night or wait for another Board member to be present.

Mr. Kafer asked why the zoning exception was different. Ms. Schemmel replied that zoning exceptions are minor exceptions and cannot be applied to the development boundary. They provide a lesser amount of relief, 50% of the 7-foot setback. There are two tiers for relief from setbacks, an exception can only address 1 of the two setbacks in question.

Nancy Kafer, 805 S 100th Street, inserted that the whole problem was that the developer did not build what was submitted.

Development Coordinator Schemmel responded that the plan constructed was not what the developer proposed. If the plan had included a courtyard as proposed, it would accommodate the accessory structure to be built.

Ms. Kafer expressed her frustration. Mr. Kafer said if they gave up 2 ½ feet, that would be 3 feet from their lot line; from the development setback they could get one foot.

Chair Pfannkuch stated that the second application gives you one foot. Mrs. Kafer responded that this doesn't give them enough. Mr. Kafer added that they couldn't build because the developer didn't follow the rules.

Mr. Aten asked if the rules had changed. Ms. Schemmel replied that the City changed Code to

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remove the ability for the setbacks to overlap. Mr. Akin noted the options provided by the builder regarding which models of home were available for them to choose from. They had contracted for a particular model but were told it wouldn't fit on the lot, and that the City wouldn't approve.

Mr. Kafer agreed that they had specifically asked which models would fit on their lot and had been given specific models to choose from. The builder said they would have to get approval by the City. Since the City allowed this, the City must remedy it. Ms. Schemmel responded that when the house plans were submitted, they showed just a patio which has the 1 foot setback. The Building Department did not catch the overlap on the development setback. Mr. Kafer clarified that there is a double overlap, which the City approved, and they had just recently found out about it. Ms. Schemmel informed that it was approved with another unit design when the final plat came through.

Chair Pfannkuch pointed out that City Code changes every couple years. She added that she understood the frustration, but there wasn't much the Board could do. She stated that they could move the item 4 weeks, and asked the applicant if they wanted it to be continued to May 1. Mr. Kafer stated he did.

Moved by Board Member Davis, seconded by Board Member Blaser, the Board of Adjustment voted to continue the item to May 1, 2024.

Vote: Blaser, Davis, Pfannkuch.....Yes
Cunningham, Stevens.....Absent

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

The next Board of Adjustment meeting with agenda items is scheduled for May 1, 2024.

Item 6 – Adjournment

Chairperson Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Davis, seconded by Board Member Blaser, the Board of Adjustment meeting adjourned at 6:06 p.m.

Angie Pfannkuch, Chair

Jennifer Canaday, Recording Secretary