

## BOARD OF ADJUSTMENT MEETING MINUTES

BOA\_AF\_05-01-2024

Chairperson Pfannkuch called to order the May 1, 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, Cunningham, Davis, Pfannkuch, Stevens.....Present

### **Item 1 – Consent Agenda**

#### **Item 1a – Minutes of April 3, 2024**

Chairperson Pfannkuch asked for any corrections to the meeting minutes of April 3, 2024. Hearing none, Chair Pfannkuch declared the minutes approved as presented.

### **Item 2 – Old Business**

There was (1) Old Business item.

#### **Item 2a – 805 S 100<sup>th</sup> Street – Variance for a Reduction of Setback to accommodate a louvered (covered) pergola – Jeff Kafer – VAR-006332-2024 (Deferred from March 20, 2024, Continued from April 3, 2024)**

Board Member Cunningham recused himself from Item 2a and vacated the dais.

Chairperson Pfannkuch informed that the Public Hearing for this item was closed on April 3, 2024, asked Staff if there were any additional comments.

Kara Tragesser, Development Services Planner, stated she had nothing to add. Board Member Blaser asked if there were any changes to the Staff Findings from the previous meeting. Planner Tragesser replied that there were no changes.

Board Member Stevens asked Development Coordinator Schemmel to clarify the overlap of the setbacks, and to help her understand the request of the variance and the setbacks. She stated she had listened to the audio file from the previous meeting. Ms. Schemmel used a drawing to clarify the development setback and the building footprint.

Board Member Stevens asked about patios that extended further than the setback allowed. Ms. Schemmel pointed out that patios do not require permits, however they are supposed to meet the setback standards.

Board Member Stevens asked for clarification regarding the zoning exception. Ms. Schemmel responded that if the structure met both setback requirements, a zoning exception would extend one more foot of allowance for the pergola. Board Member Stevens commented that this doesn't allow what the applicant wants to build.

Chair Pfannkuch asked if there were any additional comments from staff. There were none. She clarified that since the Public Hearing had not been re-opened, the applicant would not come back up for comments.

Deputy City Attorney Jessica Grove informed for the Public Record that a Public Hearing had been

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held for this item on April 3, 2024, and the applicant presented their evidence, their testimony for why they felt they met the variance requirements. The Public Hearing had been closed, and the Board deferred voting on the item to allow an additional Board member to be present. She stated that unless the Board needed additional information that was not presented in order to have an informed decision on the variance, the Board could vote without re-opening the Public Hearing. The legal requirement to hold a public hearing had been met.

Attorney Grove stated that it was her understanding that the applicant has not been seeking a Zoning Exception, however Staff had offered it as an option to help them get closer to what they wanted. The standard of review for approving a Zoning Exception is a lot easier than a Variance. She stated that based her conversations with Staff, and her understanding from the previous meeting, the applicant was not interested in the Zoning Exception. Ms. Grove concluded that she did not know if this had changed.

Board Member Stevens asked what the printed materials were on the dais that had been presented prior to the meeting starting. Ms. Grove stated they were printouts provided by the applicant. If the Public Hearing is not re-opened, those items would not be considered. They appeared to be pictures of other properties. From a legal standpoint, she didn't know how those would support whether this applicant had an unnecessary hardship or meets the burden of a variance. If there have been other structures built which are non-compliant, does not justify approval of the variance.

Chairperson Pfannkuch stated that the Board didn't have any new evidence in their packets; they do have pictures as provided by the applicant. She asked if anyone on the Board saw a need to re-open the Public Hearing, adding that they had the evidence from the previous meeting. The Board agreed that they did not.

Chairperson Pfannkuch asked for continued discussion or a motion and a second for this item. She commented to the Kafers that she understood what they are trying to do, however the Board is in a hard spot.

Mr. Kafer interjected that they had not been allowed to speak. Chair Pfannkuch affirmed that and asked the Deputy City Attorney to go through that again. Mr. Kafer stated he had already heard that. Attorney Grove replied that they had already had their Public Hearing, which is what the law requires, not multiple public hearings. It depended on whether the Board believed they had enough information to vote on the variance, based on the variance criteria.

Board Member Stevens reiterated that she had listened to the previous meeting. Chair Pfannkuch stated that at this time she would call for a vote. Attorney Grove asked that the Board include with their vote which set of findings they were basing their decision on.

Moved by Board Member Davis to deny the variance based on Staff Findings, seconded by Board Member Blaser; the Board of Adjustment denied the variance.

Vote: Blaser, Davis, Pfannkuch, Stevens .....Yes  
Cunningham.....Abstained  
Motion carried.

Board Member Cunningham returned to the dais.

**Item 2a part 2 – 805 S 100<sup>th</sup> Street – Zoning Exception for a Reduction of Setback to accommodate a louvered (covered) pergola – Jeff Kafer – VAR-006332-2024 (Deferred from March 20, 2024, Continued from April 3, 2024)**

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Development Coordinator Schemmel inserted that the Chair could ask the applicant if they wish to move forward with the Zoning Exception.

Chairperson Pfankuch asked if the Applicant would like to proceed with consideration of a zoning exception at this time. Mr. and Mrs. Kafer stated they would not.

### Item 3 – Public Hearings

#### Item 3a – 5485 Mills Civic Parkway, Grimaldi's – Variance of the Sign Code to accommodate an additional 7 sq ft of wall signage and 3 sq ft of projecting signage – Ryne Schroeder – VAR-006387-2024

Chairperson Pfankuch 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 April 23, 2024, in the Des Moines Register.

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

Vote: Blaser, Cunningham, Davis, Pfankuch, Stevens ..... Yes  
Motion carried.

Ryne Schroeder, Iowa Sign Company, 3520 Merle Hay Road, Des Moines, presented the request for a variance to allow for additional wall signage on a third projecting side to fit the design standards used by the applicant in other locations. He stated that the sign would meet code if it were two-sided, however he hoped that the Board would see that this is a unique situation and approve the variance request.

Chair Pfankuch noted that they are already using 100 square feet of 132 allowed on the larger store sign near the main entrance. Mr. Schroeder replied that it was 100 square feet. Ms. Pfankuch commented that it's already up. Mr. Schroeder affirmed that it is.

Board Member Cunningham asked if there was a photo available of the current sign. Mr. Schroeder stated there was not. He later found an image on his phone which he showed to the Board. Board Member Cunningham asked if the slide image being presented was an illustration of the requested sign. Mr. Schroeder affirmed that it was.

Board Member Stevens asked the purpose of the third face on the projecting sign. Mr. Schroeder informed that this is Grimaldi's typical store sign and has been mounted on stores in other states.

Board Member Stevens asked for clarification regarding which direction the third sign would face. Mr. Schroeder explained that it would face Mills Civic Parkway.

Board Member Stevens asked where the main store sign is mounted. Chair Pfankuch inserted that there is a very large sign on the front entrance of the building.

Board Member Stevens asked if this was the only place to put the projecting sign. Mr. Schroeder responded that this is where the client requested to have it.

Board Member Stevens asked if there was additional signage the West Glen tenants on the

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monuments. Mr. Schroeder replied that there were no monument signs available to use.

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

Kate Devine, Development Services Associate Planner, noted that the applicant is the Iowa Sign Company, representing the tenant, Grimaldi's. The building owner was informed of the variance request and did not respond back to Staff.

Chair Pfannkuch commented that the sign permit used 100 feet of the allowed 132 square feet, and they are requesting the extra square footage because they will be over with the three-sided sign. Board Member Stevens stated they would be over the allowance if it was three sided but not if it was two sided. Planner DeVine agreed, they are over by 20 feet with the third face of the projecting sign.

Deputy City Attorney Jessica Grove informed that approval of the variance request would be granting three things. It would allow a larger maximum allowed square footage for signage on the building, it would allow the tenant to exceed the maximum allowed square footage for a projecting sign, and it would allow a projecting sign to have a third side which exceeds the definition of a projecting sign, which is defined as double-sided. She added that the branding guidelines should have been known when the first sign was applied for. Ms. Grove noted that the applicant is representing the tenant, and that the owner had been non-responsive.

Board Member Stevens commented that the Board had spent a lot of time on a recent case reviewing a similar request by Dave & Buster's. Ms. Grove stated this was before her time with the City and that she wasn't familiar with it.

Board Member Cunningham informed that the Board had denied that variance. He pointed out that special exceptions do not apply in these cases, as they are written primarily for residential setbacks. Board Member Cunningham added that the difficulty is that the law requires them to show an unnecessary hardship and that the land can't yield a reasonable return. He added that the Board has reviewed several similar applications, and while he is sympathetic, it doesn't meet the legal standard required. Board Member Cunningham concluded that he would move to deny the variance based on Staff Findings as written.

Moved by Board Member Cunningham, seconded by Board Member Stevens, the Board of Adjustment denied the variance based on Staff findings.

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

**Item 3b – Oaks on Grand, 5725 Raccoon River drive – Variance of the accessory building placement allowance to allow an accessory building to be located in a front yard – JCG Equity, L.L.C. – VAR-006398-2024**

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 April 17, 2024, in the Des Moines Register.

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

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

Michael Wahlert, Orca Consulting, LLC., 3512 Richland Road, Van Meter, presented the request on behalf of the Oaks on Grand. He noted that Office Building 1 is in place, and Office Building 2 is part of the general plan, to be located on the north side of the site. The applicant intends to provide their own interior and exterior property maintenance and snow removal; therefore, they would like to build an accessory structure to house the equipment. The property is surrounded on three sides with street frontages, including Grand Avenue, Raccoon River Drive, and Booneville Road with an embankment. A detention pond, and a Stormwater easement are located on the west side. Mr. Wahlert informed that Staff had provided alternate locations for the accessory structure, however they were not desirable as they either replaced the pond view with a view of the embankment and parking lot, or they disrupted the planned parking area. Regarding the Code requirement that an accessory structure could not be located in the front yard, he commented that there isn't much on the site that isn't considered front yard.

Board Member Cunningham clarified whether the front of the building is considered Raccoon River Drive, and the building address. Mr. Wahlert affirmed that it is, and that the accessory structure is in the backyard from that road.

Board Member Cunningham asked where the applicant wants to place the accessory building. Mr. Wahlert stated it would be to the northwest of the primary building. He added that the address and frontage of the building are toward Raccoon River Road, but the issue is regarding the frontage to Booneville Road. The only other option they would have, as recommended by Staff in their report, would be to move the building to the North. There would be one side of the building that would have a parking lot view. They would be trading their pond view with the patio toward the pond for a view of the embankment by Raccoon River Drive.

Board Member Stevens commented that this is a double-cornered lot with streets on three sides. Mr. Wahlert agreed, saying Grand Avenue was the third side. Board Member Stevens clarified that every yard on the site is a front yard. Mr. Wahlert clarified that there was not a street on the West side, and they would move it south which would place it west of the building but there are easements in the way which prevent constructing a building there.

Board Member Stevens asked if this building was included in the master plan. Mr. Wahlert stated the office building was, but not the accessory structure.

Mr. Wahlert commented that they are meeting the setbacks for accessory buildings, noting the location of the easement on the site.

Board Member Cunningham asked if they had to reconfigure the building, would the value decrease. Mr. Wahler replied that the value for the office is the amenity of the west detention pond, the landscaping on the berm. Changing the view from the pond and trail to a view of the embankment and the parking lot.

Board Member Cunningham asked if there were no other configurations. Mr. Wahlert replied that Staff offered a version which attaches the accessory structure to the primary building, but this creates a parking nightmare. He commented that he didn't know if it would work to put parking over the easement.

Board Member Cunningham asked if the second building was part of the master plan. Mr. Wahlert

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said the second office building was.

Board Member Cunningham asked if master plans are approved by the Planning & Zoning Commission or some other body. Mr. Wahlert responded that there had been no design for the second building at that time. Development Coordinator Schemmel inserted that the approved site plan for the site only included the first office building.

Board Member Stevens added that they're not typically platted. Mr. Wahlert said they are not.

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

Brian Portz, Development Services Planner, pointed out on slide 11 that the lot was not actually surrounded by three streets. He noted that there is a different lot on the South side of this parcel meaning the lot in question only has streets on two sides, not three.

Board Member Stevens asked Planner Portz to explain the front yards. Mr. Portz replied that there are two front yards, the sides facing Booneville Road and Raccoon River Drive. Code states that the detached accessory structure can't be located ahead of the front plane of the primary building. He added that the second building has not been built yet; they have site design options that can meet Code.

Board Member Stevens asked if Building 2 is in front of the primary building. Planner Portz responded that both office buildings are considered primary buildings.

Deputy City Attorney Grove inserted that with variances, there is often discussion about reasonable return on investment, and also whether the situation is due to circumstances not of the owner's own making, and not due to the general conditions in the neighborhood. Ms. Grove asserted that this was a vacant site when the owner decided to construct the building. If they had considered that they wanted to include an accessory structure, the first building may have been moved around. The building to be constructed can be moved around, this is not an infill project. This is one area not often looked at, obviously all of the criteria still have to be met.

Chair Pfannkuch clarified that this has to be a variance request because its new platted property, it's not residential, so a zoning exception would not apply. Attorney Grove responded that accessory structures are not allowed in front yards of commercial or residential properties. If this variance is granted, it will create a very strong precedent.

Board Member Cunningham asked if the issue is specific to the accessory structure. Chair Pfannkuch answered that the second building is allowed, it's the accessory structure that is a problem. Attorney Grove clarified that it is the proposed location of the accessory structure relative to the proposed location of the primary structure that is the issue. Staff tried to provide some alternative options which would make the accessory structure a non-issue.

Board Member Davis questioned whether some of the changes included that they could move the primary building. Attorney Grove replied that if they move the primary building so that the accessory building does not exceed the front plane, such as suggested in Option A, then the accessory building is behind the primary building, and they wouldn't need to come before the Board for any of this.

Development Coordinator Schemmel inserted that Staff know this is an onerous process and try to work with the Applicant to show there are other solutions. The applicant does not have to choose

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one that Staff recommends; Staff are just trying to show there are other options that will work on the site.

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

Moved by Board Member Stevens, seconded by Board Member Davis, the Board of Adjustment denied the variance based on Staff Findings.

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

**Item 4 – New Business**

There was (1) New Business item.

**4a – Election of Officers**

Chair Pfannkuch opened the floor for nominations for Chair and Vice Chair. Tom Cunningham volunteered to serve as Board Chair for the coming year; Michele Stevens volunteered to serve as Vice Chair. Both were accepted unanimously.

**Item 5 – Staff Reports**

Deputy City Attorney Jessica Grove informed the Board that the City Legal department is now fully staff with four attorneys. She stated that Bharabi Pandit and Larry Dempsey had recently joined staff.

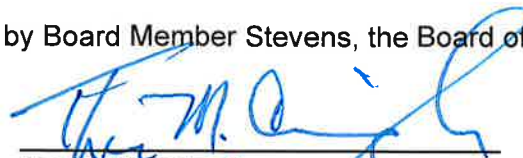
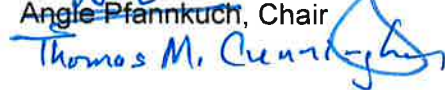
Wednesday, May 15 is scheduled to be the next meeting of the Board, however at this time there are no items on the agenda.

**Item 6 – Adjournment**

Chairperson Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Cunningham, seconded by Board Member Stevens, the Board of Adjustment meeting adjourned at 6:18 PM.

  
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Jennifer Canaday, Recording Secretary

  
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Angie Pfannkuch, Chair  
  
Thomas M. Cunningham