

**CITY OF PELLA, IOWA
BOARD OF ADJUSTMENT MINUTES
APRIL 3, 2023**

CALL TO ORDER BY THE CHAIRPERSON AND ROLL CALL

Chairperson Westra called the Board of Adjustment to order at 6:00 p.m. in the Public Safety Complex. Members present were: Kristi Kious, Vince Nossaman, Jaci Nunnikhoven, Susan Reiter, Lyle Vander Meiden, Mike Vander Wert, and Corey Westra; absent: none. Staff present: Planning and Zoning Director Gerald Buydos, Zoning Analyst Jared Parker, and the Deputy City Clerk. Two members of the public attended the meeting.

CHAIRPERSON’S COMMENTS

Approval of the Tentative Agenda

Motion by Vander Wert, second by Reiter to approve the tentative agenda. Motion carried 7-0.

APPROVAL OF MINUTES

Motion by J. Nunnikhoven, second by Reiter to approve the minutes from February 20, 2023. Motion carried 7-0.

WORK SESSION

Work Session to Review the Impact of Abstentions

At the February 20, 2023 Board of Adjustment meeting, there were questions raised as to how abstentions impact the numbers needed for quorum or approval at Board of Adjustment meetings.

Upon consulting the City Attorney, staff was informed that under state law (362.6), “A measure voted upon is not invalid by reason of conflict of interest in an officer of a city, unless the vote of the officer was decisive to passage of the measure. If a specific majority or unanimous vote of a municipal body is required by statute, the majority or vote must be computed on the basis of the number of officers not disqualified by reason of conflict of interest. However, a majority of all members is required for a quorum. For the purposes of this section, the statement of an officer that the officer declines to vote by reason of conflict of interest is conclusive and must be entered of record.”

For a quorum to exist, a majority of the entire board will need to be present. As the board has nine seats, regardless of whether they are filled or vacant, at least five members must be present. Members who will be abstaining on votes still count towards meeting the quorum

requirement. Even if three are abstaining, if two other members are present, then a quorum exists.

Where abstentions affect the business of the board is on voting. If a member abstains for conflict of interest (and no other reason), they reduce the number of seats that are used to generate the majority. For example, should there be two abstentions for a conflict of interest, the board would utilize the majority required for a seven-member board, which would be four, instead of the full nine-member board, which requires a five-vote majority. It is critical to note that this only applies to abstentions based on a conflict of interest, as per the Board of Adjustment's procedures, abstaining without declaring a conflict of interest counts as a no vote. For example, if a vote had three abstentions, two with conflicts of interest and one without, the board would be treated as having seven members instead of six, and the majority needed to pass items would be four.

Should there be abstentions based on conflicts of interest, there is no change in the numbers for quorum, but the number of seats used to determine a majority vote for approval is adjusted accordingly.

Planning and Zoning Director Gerald Buydos explained that members must declare their abstention prior to discussion of the agenda item and must also declare their reason for abstaining. Then, those who have declared abstentions should move to the audience and can participate in the public hearing as a member of the public. Should both the chair and vice-chair declare conflicts of interest, a temporary chair would then be elected.

PUBLIC HEARINGS

Consider a Minor Modification Request from Tim Nunnikhoven to Reduce the Minimum Setbacks of the Rear Yard for the Property Located at 315 Jackson St.

Tim Nunnikhoven submitted a minor modification application to reduce the minimum setbacks of the rear yard at the property located at 315 Jackson St. to build an addition. The subject property is located within the Two-Family Residential (R2) zoning district. This request would reduce the rear yard setback of the R2 zone from the standard minimum of 35 feet to 30 feet. The purpose of this minor modification is to construct a new addition.

Under the City's zoning ordinances, the Board may hear and review applications for, and authorize requests for, minor modifications under seven different circumstances per Chapter 165.43.3.H of the City zoning ordinance. In this case, the applicant requested the following minor modification:

“Reduce the required minimum front and rear yard setbacks for principal structures in the residential districts by no more than five feet, based on the setback standards. (Sect.165.43.3.H.1.a).

Staff believes the requested minor modification will not have a negative impact on the subject property or neighboring properties and will not increase the amount of people or vehicles

within the neighborhood. Staff also believes the proposal would maximize the owner's use of the property while still complying with City Code. Staff received no objections to the minor modification. For these reasons, staff believes the minor modification request should be granted and, therefore, recommended approval of the proposal.

Convened **Public Hearing** on the minor modification request. No written comments were received. The applicant, T. Nunnikhoven, was present to answer questions from the Board. He explained the pergola roof will be placed over an existing brick patio.

Motion by Nunnikhoven, second by Kious to close the **Public Hearing** as no further comments were received. Motion carried 7-0.

Motion by Vander Meiden, second by Kious to approve the minor modification request as submitted. Motion carried 7-0.

Consider a Variance Request from Jeff Dingeman to Reduce the Rear Yard Setbacks of the Property Located at 1301 W. 12th St. to Construct Business Suites

J. Nunnikhoven and Reiter stated they would be abstaining from voting on this item. J. Nunnikhoven declared a conflict of interest as she is employed by the law firm that represents the applicant. Reiter declared a conflict of interest as she is related to the applicant.

Jeff Dingeman submitted a variance application for his site located at located at 1301 W. 12th St., north of Recker Dental Care and east of DeVries Electric, Inc. The applicant requested a variance to change the required setback on the east side of Lot 1. The Limited/Light Industrial (M1) zoning regulations include the following mandatory setbacks:

- Front yard: 25 feet
- Street side yard: 25 feet
- Interior side yard: 0 feet except where adjacent to residential uses or districts, then 25 feet.
- Rear yard: 25 feet

The applicant requested a variance to change the rear setback of Lot 1 from 25 feet to 10 feet. This is a net reduction of 15 feet.

The property does not present any unique features that are not normally present in the nearby lots and staff does not believe the variance request meets any of the seven criteria listed above. In addition, granting a variance for the convenience of the developer is not an acceptable reason.

Finally, the process of going through a subdivision proceeding allows all interested parties to design the project accordingly before the plat is approved and recorded. Any design errors on the plat should have been modified by the developer. The same applies to the site plan process, as the developer is ultimately responsible for the design of the site and building layout for their needs.

Staff believes the request fails to meet the requirements and criteria to grant a variance. Staff recommended denial of the variance.

Convened **Public Hearing** on the variance request. No written comments were received. The applicant, Dingeman, was present to speak in favor of the variance request and answer questions from the Board.

Vander Meiden asked Dingeman to explain why he is requesting the variance. Dingeman said changing the rear yard setback will permit him to build a structure that is more attractive to tenants. The reduced rear yard setback would permit someone to pull a truck and trailer into one of the bays and shut the doors. Dingeman noted that he did look into applying for a minor modification but was told those are only possible for residential properties.

Nossaman questioned Dingeman on whether he had approached neighboring property owner Larry De Vries about purchasing some land, so that the variance would no longer be necessary. Dingeman said that De Vries had, in conversation with him, expressed support for the variance and told Dingeman that he thought the Board would approve the variance request, so purchasing additional land would not be necessary.

Motion by Kious, second by Nossman to close the **Public Hearing** as no further comments were received. Motion carried 5-0. (J. Nunnikhoven and Reiter abstained)

Vander Meiden stated that he had reservations about the 10-foot rear setback and wondered whether there might be a compromise that could be made somewhere between 25 feet and 10 feet.

Westra cautioned the Board that the decision made on this matter would set a precedent.

Motion by Nossaman, second by Vander Meiden to deny the variance request. On roll call the vote was: ayes: Nossaman, Vander Meiden, Vander Wert, and Westra; nays: Kious. Motion carried 4-1 (J. Nunnikhoven and Reiter abstained).

OTHER BUSINESS

Other

Buydos reported that Larry Lautenbach has resigned from the Board of Adjustment. Staff will contact the Marion County Board of Supervisors to inform them of the vacancy.

Westra thanked the Board and staff for their diligence in finding a meeting date that worked for all parties involved.

Next Meeting Date

The next meeting is scheduled for May 15, 2023.

Adjourned at 6:49 p.m.