

**MINUTES
ZONING BOARD OF ADJUSTMENT
NOVEMBER 19, 2019**

1. **CALL TO ORDER** – Vargas called the meeting to order at 4:00 p.m.
2. **ROLL CALL**
Members Present: Behrens, Mescher, Olson, Tritsch (via phone) and Vargas
Members Absent: None
Staff: Gibbons, Jura, Meeks, Monrroy and Weber
3. **PLEDGE OF ALLEGIANCE**
4. **ADOPTION OF AGENDA**
Motion by Mescher, second by Behrens, to adopt the agenda as presented. Motion carried by unanimous voice vote.
5. **APPROVAL – MINUTES OF SEPTEMBER 17, 2019 MEETING**
Motion by Olson, second by Mescher, to approve the minutes. Motion carried by unanimous voice vote.
6. **PROOF OF PUBLICATION** – Gibbons
7. **REVIEW OF MEETING PROCEDURES** – Vargas
8. **PUBLIC HEARINGS**

- A. CASE #BA-19-007: Public hearing on the request of Daniel and Sandy R. Velasquez for a variance from Section 15.08B.050, *Site Development Regulations*, in the R-1/Single-Family Residential District of the Municipal Code (Zoning Ordinance) to allow an accessory structure to be located closer to the front property line than the existing principal structure on property located at 1500 Indian Hills Road, legally described as being Lot 2, Indian Hills Subdivision, City of Council Bluffs, Pottawattamie County, Iowa.

Monrroy provided an overview of the request.

The following members of the public spoke in favor of the request:

Daniel Velasquez, 1500 Indian Hills Road, Council Bluffs, IA 51503, spoke as the applicant of the request. Velasquez reiterated that the topography of the lot limits where a detached garage can be built on his property as there is a severe drop-off towards the rear yard. Velasquez stated the garage will be constructed over a pad located on the subject property which was previously used as a garden. Velasquez also stated the garage will be located far enough from the front property line that it will not project in front of the house at 1504 Indian Hills Road, but will still be large enough to accommodate two parking spaces. Velasquez also stated a driveway will be paved from the garage to Indian Hills Road.

No one spoke in opposition of the request. Vargas closed the public hearing.

Olson stated that this is a straightforward case. Mescher concurred and stated the hardship is due to the subject property being configured as a corner lot but regulated as an interior lot per the Zoning Ordinance. Behrens added that the placement of the house also contributed to the hardship placed on the subject property.

Motion made by Mescher, second by Behrens to approve the variance request to allow an accessory structure to be located closer to the front property line than the existing principal structure in the R-1/Single-Family Residential District of the Municipal Code (Zoning Ordinance) on property located at 1500 Indian Hills

Road, legally described as being Lot 2, Indian Hills Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, as per Staff's recommendation.

VOTE: AYE – Mescher, Olson, Tritsch, Behrens and Vargas. NAY – None. ABSTAIN – None. ABSENT – None. Motion carried.

The Findings of Fact are as follows:

1. The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance, which does not apply to other properties in the vicinity.
The size of the property are typical of those in the general vicinity and surrounding area. Although the topography of the lot is also typical for the area, it limits the options in terms of where the applicants could build an accessory structure, along with the irregular configuration of and the location of the private sewage disposal system. Therefore, the application of the Ordinance would create a particular hardship that would only apply to the subject property.
 2. Because of such disadvantage, the owner is unable to make reasonable use of the affected property.
The existing single-family dwelling is compliant with the zoning district and appears to meet all setback and lot coverage requirements. Existing parking meets the standards outlined in Chapter 15.23, Off-Street Parking, Loading and Unloading. The owner can continue to use the property for residential purposes if the variance request is not granted. However, literal enforcement of the Ordinance hinders the applicant's ability to construct a detached garage in the subject property, thus depriving them from reasonable use of the property.
 3. The disadvantage does not exist because of conditions created by the owner or previous owners of the property.
The existing lot layout and configuration was not created by the owners. The current required front yard setback was established when the dwelling was built in 1959, 60 years before the applicants purchased the property. These existing conditions encumber the applicants' ability to construct accessory structures behind the required setback.
 4. Granting the variance will not confer on the applicant any special privileges that are denied by this ordinance to other properties or structures in the same district.
Granting the variance will not confer on the applicants any special privileges as it will allow them to place an accessory structure next to the existing single-family dwelling, which is allowed for other properties in an R-1 District.
 5. Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this ordinance.
Granting the variance will not be contrary to the public interest and will not adversely affect other properties in the vicinity. The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ordinance that create particular hardships. The request for the above mentioned variance is the result of an unnecessary hardship with the subject property.
- B. CASE #BA-19-008: Public hearing on the request of Yoder Construction, represented by Bryan Yoder, for variances from Section 15.23.020(04), *General Provisions*, and Section 15.23.030(03)(d), *Design Standards, Off-Street Parking, Loading and Unloading* of the Municipal Code (Zoning Ordinance) to allow one off-street parking space to be located within a required front yard setback in an R-2/Two-Family Residential District on properties located at 409, 431, 435, 437, and 441 Park Avenue, legally described as Lot 4, Judd's Park Subdivision and the West ½ of the vacated alley adjacent; and Lots 2 through 5, Wells Park Addition and the West ½ of the vacated alleys adjacent, City of Council Bluffs, Pottawattamie County, Iowa.

Meeks provided an overview of the request.

The following members of the public spoke in favor of the request:

Italia Washburn, 439 Glen Avenue, Council Bluffs, IA 51503 spoke as the representative of the Fairmount Park Neighborhood Association. Washburn stated the subject property is located within the boundaries of the neighborhood association. Washburn presented a letter from the Fairmount Park Neighborhood Association in support of the variance to the Board for their review, to be known as Exhibit 1.

Motion by Behrens, seconded by Mescher to accept the exhibit into the record. Motion approved by unanimous voice vote.

The following members of the public spoke in opposition of the request:

Don Angeroth, 421 and 429 Glen Avenue, Council Bluffs, IA 51503 had an inquiry regarding the ownership of the Lot 1, Wells Park Addition and the North ½ of the vacated east/west alley adjacent. Gibbons stated the lot is privately owned and not a part of the proposed variance request. Angeroth asked the applicant if he had attempted to acquire the aforementioned lot. Bryan Yoder, 18772 300th Street, Treynor, IA 51503, spoke as the applicant of the request. Yoder stated he did not attempt to acquire that property, but is interested in it. Angeroth suggested Yoder should purchase that lot and replat the subject properties to create wider lots, thus removing the need for parking in the front yard. Yoder stated that although he has considered that option, the topography of the lot would still create significant challenges on locating parking outside of the required front yard setback.

Vargas closed the public hearing.

Behrens stated she is in favor of the request, arguing the proposed houses will enhance the aesthetic of the neighborhood. Behrens also noted that the topography of the neighborhood poses a challenge to the development of the subject properties.

Motion made by Olson, second by Behrens to approve the variance request to allow one off-street parking space to be located within a required front yard setback in an R-2/Two-Family Residential District on properties located at 409, 431, 435, 437, and 441 Park Avenue, legally described as Lot 4, Judd's Park Subdivision and the West ½ of the vacated alley adjacent; and Lots 2 through 5, Wells Park Addition and the West ½ of the vacated alleys adjacent, City of Council Bluffs, Pottawattamie County, Iowa, as per Staff's recommendation.

VOTE: AYE – Mescher, Olson, Tritsch, Behrens and Vargas. NAY – None. ABSTAIN – None. ABSENT – None. Motion carried.

The Findings of Fact are as follows:

1. The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance, which does not apply to other properties in the vicinity.
None of the subject properties meet the required lot width of 50 feet for interior lots in the R-2/Two-Family Residential District, and each property has significant topographic issues with hillsides within the front yard building setback and a significant bluff at the rear of the properties. The limited lot width does present challenges with constructing homes that would allow additional parking on the side or rear of the homes, making those parking alternatives unviable options, and the hillside does not allow the developer to move the homes further from the front-yard setback. The topographic concerns and limited lot width does create significant disadvantages in regards to the development of each property.
2. Because of such disadvantage, the owner is unable to make reasonable use of the affected property.
The limited lot width and topographic concerns will present challenges for any development on the properties. The side-by-side duplexes that have been proposed by the developer, which are a permitted use in the R-2/Two-Family Residential District, would not be possible without the relief of the proposed off-street parking variances.

3. The disadvantage does not exist because of conditions created by the owner or previous owners of the property.

The disadvantages of the subject properties are created by topographic issues and the width of the lots as they were platted in 1890. The developer has not altered any physical features or lot lines on any of the properties since being awarded ownership.

4. Granting the variance will not confer on the applicant any special privileges that are denied by this ordinance to other properties or structures in the same district.

Granting the variance will not confer special privileges on these properties, as it is not uncommon to see unique parking areas in the front yard of properties with topographic difficulties, especially those in the historic districts of the City of Council Bluffs. Previous homes on three of the five lots featured detached garages that were built into the hillside and within the 25 foot front yard setback. The proposal that has been presented by the applicant, with all structures meeting the required 25 foot front yard setback and only a driveway being located in front of the homes, would be more conforming than what was previously located on the lots.

5. Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this ordinance.

The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ordinance that create particular hardships. The request for the above mentioned variances are the result of the physical conditions of properties that have not been altered by the developer requesting these variances. The proposed variances will not be contrary to the public interest, and will not adversely affect other properties in the vicinity.

- C. CASE #CU-19-005: Public hearing on the request of Dallas Johnson Greenhouse, represented by Pete Hult, for a conditional use permit to allow a ‘greenhouse, commercial’ in an A-2/Parks, Estates, and Agricultural District on property located at 2802 Twin City Drive, legally described as being part of the NW1/4 NE 1/4 of Section 15.74-44, lying North of Highway 275, except City right-of-way, along with all of the SW1/4 SE1/4 and the South 10.01 acres of the NW1/4 SE1/4 all in Section 10-74-44, all in the City of Council Bluffs, Pottawattamie County, Iowa.

Olson stated that he will abstain from voting on the request.

Weber provided an overview of the request.

The following members of the public spoke in favor of the request:

Peter Hult, 324 East Ferndale Drive, Council Bluffs, IA 51501, spoke as the representative of Dallas Johnson Greenhouse. Hult reiterated that they are requesting the existing greenhouses to be considered open space for zoning purposes only to allow them to construct a 5-acre greenhouse and a warehouse on the subject property. Hult stated that since no additional employees will be hired as part of this expansion, no additional parking spaces should be required.

John Jorgensen, HGM Associates, 640 5th Avenue, Council Bluffs, IA 51501, spoke as the engineer for the project. Jorgensen stated the operation will not change as employees already maintain and harvest plants on the north 10 acres of the subject property. Jorgensen also stated that the parking study conducted by HGM Associates estimated a minimum of 140 parking spaces are required for this operation, 16 fewer than the existing 156 parking spaces on the subject property. Jorgensen stated that due to these two factors, the conditional use permit should be approved without requiring an additional 57 parking spaces.

No one spoke in opposition of the request. Vargas closed the public hearing.

Behrens asked if Staff believed the applicant had provided enough information to support approving the existing 156 parking spaces on-site today as the minimum amount of off-street parking required for the subject property. Gibbons stated Staff did not support establishing the existing 156 parking spaces as the

minimum amount required as even with the additional 57 parking spaces, the number of parking spaces provided on-site would only comprise 59% of the 361 off-street parking required by the Zoning Ordinance for this operation. Gibbons stated that Staff's reasoning for requiring an additional 57 parking spaces is to help bring the site into conformance with the Zoning Ordinance. Mescher stated that 361 parking spaces is excessive due to the unique nature of the business. Behrens stated that the additional 57 parking spaces recommended by Staff is a reasonable compromise as those parking spaces would be required by the Zoning Ordinance due to the warehouse addition.

Mescher invited Hult to address the concerns raised in a letter by Harold Sears, owner of property addressed at 3809 Ramelle Drive. Hult stated that truck traffic flows to the south and will not increase in volume. Hult also stated they have improved drainage on the site and noted that the ditch along the western property line is dry and has no standing water. Behrens stated that the impact of the proposed expansion on the neighboring properties will be minimal due to the screening requirements recommended by Staff, the applicant not requesting any exterior lighting and the existing operation serving as an appropriate transitional use between the residential and industrial areas.

Motion by Behrens, seconded by Mescher, to approve the request for a conditional use permit to allow a 'greenhouse, commercial' in an A-2/Parks, Estates and Agricultural District on property located at 2802 Twin City Drive, legally described as being part of the NW1/4 NE1/4 of Section 15.74-44, lying North of Highway 275, except City right-of-way, along with all of the SW1/4 SE1/4 and the South 10.01 acres of the NW1/4 SE1/4 all in Section 10-74-44, all in the City of Council Bluffs, Pottawattamie County, Iowa, as per Staff's recommendation, subject to the following conditions:

1. The applicant shall secure all necessary permits and licenses for the operation of the conditional use and shall comply with all applicable Federal, State and local codes.
2. Any future expansion shall require approval from the Zoning Board of Adjustment, as it would be considered a modification to their conditional use permit.
3. The applicant shall install screening in accordance with Section 15.24.040, *Fence regulations*, along the western property line. If the applicant chooses to install a 'vegetation fence,' said fence shall include 110 tall, evergreen trees planted every twenty (20) feet on center along the western property line. Each tree shall reach a minimum of six (6) feet in height within three (3) years of planting and shall have a minimum mature height of twelve (12) feet. The required screening shall be installed prior to issuance of a Certificate of Occupancy.
4. The submitted parking analysis is only applicable to the current operation. The applicant shall install a minimum of 57 additional off-street parking stalls as discussed in the comments above and in accordance with the standards listed in Section 15.23, *Off-Street Parking, Loading and Unloading*, of the Council Bluffs Municipal Code (Zoning Ordinance). If the applicant does not wish to provide the required amount of off-street parking per the City's Zoning Ordinance, a parking analysis for the proposed greenhouse and warehouse additions may be submitted for consideration.
5. All off-street parking areas, drive aisles, and circulation routes shall be hard-surface paved in accordance with the standards listed in Section 15.23, *Off-Street Parking, Loading and Unloading*, of the Council Bluffs Municipal Code (Zoning Ordinance).
6. All open-air greenhouses on the subject property shall be considered open-space from a zoning standpoint; however; all open-air greenhouse structures shall comply with all applicable building and fire codes.

VOTE: AYE – Mescher, Tritsch, Behrens and Vargas. NAY – None. ABSTAIN – Olson. ABSENT – None. Motion carried.

The Findings of Fact are as follows:

1. The proposed conditional use will comply with all applicable regulations of this Ordinance, including lot requirements, bulk regulations, use limitations, and all other standards or conditions contained in the provisions authorizing such use.

The subject property is comprised of 76.01 acres of developed land. The property is currently at 52.5% lot coverage, which exceeds the maximum 10% lot coverage allowed in the A-2/Parks, Estates and Agricultural District per Section 15.05.050, *Site Development Regulations*, of the Municipal Code (Zoning Ordinance). The proposed additional 235,000 square foot greenhouse and 50,000 square foot warehouse would put the property at 61% lot coverage. As part of their request, the applicant is asking that the open-air greenhouses located on the property be considered green space as opposed to structures in order to comply with the maximum 10% lot coverage requirement of the A-2 District.

All open-air greenhouses on the subject property shall be considered open space rather than structures in order to bring the property into compliance with the maximum 10% lot coverage requirement of the A-2/Parks, Estates, and Agricultural District chapter of the Council Bluffs Municipal Code (Zoning Ordinance). The open-air greenhouses function as agricultural fields, which have historically been considered open-space. These open-air greenhouses are lightweight, open structures with clear polycarbonate walls and ceiling. Portions of the walls and roofs of the greenhouses are typically left open during the warmer months of the year, which differentiates these structures from a typical building. This interpretation of the open-air greenhouses as open-space and not structures is only applicable from a zoning standpoint. All structures on the property shall meet all applicable building and fire codes. All office and warehousing facilities on-site shall count towards the total lot coverage. The proposed greenhouse and warehouse structures shall meet all height and setback requirements of the A-2 District.

At this time, the only applicable parking standards for the proposed ‘greenhouse, commercial’ use are identified in ‘Schedule A’ of the Zoning Ordinance. ‘Schedule A’ “sets forth a minimum off-street parking requirement for uses with elements having different functions or operating characteristics.” Per ‘Schedule A,’ “office or administrative activity” requires “1 space per 300 square feet” and “Indoor or outdoor storage or warehousing” (greenhouses) requires “1 space per 5,000 square feet.” Based on this calculation, the applicant’s current operation would require 361 parking spaces. The subject property currently has a total of 156 parking spaces. The applicant has submitted a parking analysis that states that the site needs a minimum of 140 parking spaces, based on peak season employment numbers, to operate successfully. The required off-street parking for the current operation shall be determined by the submitted parking analysis due to the unique nature of the applicant’s operation and the deficiency of the City’s Zoning Ordinance. The submitted parking analysis shall not apply to the proposed greenhouse and warehouse additions. The proposed additions, along with any future development, shall comply with the current parking standards stated in Section 15.23, *Off-Street Parking, Loading and Unloading*, of the Council Bluffs Municipal Code (Zoning Ordinance). The required number of off-street parking spaces of the ‘greenhouse, commercial’ use shall be based on the standards stated in the above mentioned section of the Municipal Code (Zoning Ordinance), which specifies 1 space per 5,000 square feet (indoor warehousing) for the proposed ‘greenhouse, commercial’ use. The proposed 285,000 square foot addition would require a minimum of 57 additional off-street parking stalls. These stalls shall be provided in accordance with the standards listed in Section 15.23, *Off-Street Parking, Loading and Unloading*, of the Council Bluffs Municipal Code (Zoning Ordinance). All off-street parking areas, drive aisles, and circulation routes shall be hard-surface paved in accordance with the standards listed in Section 15.23, *Off-Street Parking, Loading and Unloading*, of the Council Bluffs Municipal Code (Zoning Ordinance). If the applicant does not wish to provide the required amount of off-street parking per the City’s Zoning Ordinance, a parking analysis for the proposed greenhouse and warehouse additions may be submitted for consideration.

2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided. **No utility service extensions and/or infrastructure improvements are necessary for a ‘greenhouse, commercial’ use to occur at this location.**
3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.

The subject property has access to Twin City Drive to the west. No additional improvements are necessary for the current request.

4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly states that such permits are obtainable for the proposed conditional use on the subject property.

The applicant shall secure all necessary permits and licenses for the operation of the conditional use and shall comply with all applicable Federal, State, and local codes.

5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.

No exterior lighting is proposed with this request. Any lighting installed at a future date shall comply with the standards stated in Section 15.24.050, *Lighting Controls*.

6. The location and size of the conditional use, the nature and intensity of the activities, to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.

The subject property is zoned A-2/Parks, Estates, and Agricultural District and exceeds the minimum lot size requirements for the district. Existing land uses in the general vicinity include an undeveloped agricultural property to the north; an undeveloped property to the east; an undeveloped agricultural property and Chapel Ridge apartments across Veteran's Memorial Highway to the south; and a convenience store, commercial storage facility and single-family residential neighborhood across Twin City Drive to the west.

The subject property abuts a residential neighborhood to the west. The proposed 'greenhouse, commercial' functions as an appropriate transitional use between the residential neighborhood to the west and the industrial property to east as it is industrial in scale but agricultural in nature. In order to provide appropriate screening between the subject property and adjacent residential neighborhood, screening shall be installed in accordance with Section 15.24.040, *Fence regulations*, along the western property line. Section 15.24.040, *Fence regulations*, includes four (4) fencing options, one (1) of which is a 'vegetation fence.' If the applicant chooses to install a 'vegetation fence,' the following standards shall apply:

- a. A minimum of 110 tall, evergreen trees shall be planted every twenty (20) feet on center along the western property line;
- b. Each tree shall reach a minimum of six (6) feet in height within three (3) years of planting; and
- c. Each tree shall have a minimum mature height of twelve (12) feet.

The required screening shall be installed prior to issuance of a Certificate of Occupancy.

7. The location, nature and height of buildings, structures, walls, and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use, and enjoyment of the adjacent land, buildings and structures.

The proposed greenhouse and warehouse structures shall meet all height and setback requirements of the A-2 District. In order to provide appropriate screening between the subject property and adjacent residential neighborhood, screening shall be installed in accordance with Section 15.24.040, *Fence regulations*, along the western property line. Section 15.24.040, *Fence regulations*, includes four (4) fencing options, one (1) of which is a 'vegetation fence.' If the applicant chooses to install a 'vegetation fence,' the following standards shall apply:

- a. A minimum of 110 tall, evergreen trees shall be planted every twenty (20) feet on center along the western property line;
- b. Each tree shall reach a minimum of six (6) feet in height within three (3) years of planting; and
- c. Each tree shall have a minimum mature height of twelve (12) feet.

The required screening shall be installed prior to issuance of a Certificate of Occupancy.

8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

If developed in full compliance with adopted City requirements, the proposed request is not anticipated to have a negative impact on property values for existing or future land uses in the surrounding area.

9. OTHER BUSINESS

- A. Items of Interest: Gibbons stated he had no additional items of interest to discuss.

10. ADJOURNMENT – Vargas adjourned the meeting at 4:37 p.m.

The recording of this proceeding, though not transcribed, is part of the record of each respective action of the Zoning Board of Adjustment. The recording of this proceeding is incorporated into these official minutes of this Board meeting as if they were transcribed herein.