

**ZONING BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 21, 2023**

1. CALL TO ORDER – Olson called the meeting to order at 4:00 p.m.

2. ROLL CALL

Members Present: Behrens, Olson, Skudler, Tritsch and Vargas

Members Absent: None

Staff: Gibbons, Harter, Jura, Schultz, and Monrroy

3. PLEDGE OF ALLEGIANCE

4. ADOPTION OF AGENDA

Motion by Vargas, second by Olson, to adopt the agenda as presented. Motion carried by unanimous voice vote.

5. APPROVAL OF THE OCTOBER 17, 2023 MEETING MINUTES

Motion by Olson, second by Behrens, to approve the minutes as stated above. Motion carried by unanimous voice vote.

6. PROOF OF PUBLICATION – Gibbons

7. REVIEW OF MEETING PROCEDURES – Olson

8. PUBLIC HEARINGS

A. CASE #CU-23-005: Public hearing on the request of Shala Tolle for a conditional use permit to allow ‘day care services’ establishment in an R-1/Single-Family Residential District on property legally described as the North 35 feet of the West 50 feet of the South 135 feet of Lot 1, Block 2, Lincoln Acres Annex AND that part of said Lot 1 described as follows, to-wit: beginning at a point which is 238 feet South of and 50 feet East of the Northwest corner of said Lot 1, thence due South parallel to the Westerly line of said Lot 1 to the North side of North Linden Avenue right-of-way, same being the South side of said Lot 1, thence Easterly and Northerly along the Southerly and Easterly side of said Lot 1, same being the Westerly side of Raymond Avenue right-of-way, to a point directly East of the place of beginning, thence West to the place of beginning, City of Council Bluffs, Pottawattamie County, Iowa. Location: 162 North Linden Avenue.

Monrroy provided an overview of the request.

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

Greg Mueller, 1805 Highway 127, Mondamin, IA 51557 spoke as the father of the applicant of the request. Mueller stated his daughter had previously operated a daycare out of her own residence and decided to find a location that could be exclusively dedicated to her business in order to provide care for more children.

Shala Tolle, 3805 Avenue ‘D,’ Council Bluffs, IA 51501 spoke as the applicant of the request.

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

Rob Boes, 267 Linden Avenue, Council Bluffs, IA 51503, disputed Staff’s findings and stated that approval of a conditional use permit to allow a commercial use in a residential neighborhood would negatively affect property values of surrounding properties and would contradict the Community Development Department’s mission to enhance the vibrancy of Council Bluffs. Boes also noted that the

appearance of the subject property had deteriorated since the daycare center began operations. Boes stated parents dropping off and picking up children at the daycare center had increased traffic congestion along Linden Avenue and Raymond Avenue. Boes also stated that allowing the applicant to increase the width of the driveway to accommodate more vehicles would convert it into a parking lot.

Bruce Mathre, 2301 Raymond Avenue, Council Bluffs, IA 51503. Mathre stated reiterated that the daycare center had deteriorated traffic conditions in the neighborhood, and expressed concern that this issue could be exacerbated in the winter. Mathre also noted that the existing attached garage on the subject property is not utilized. Mathre stated it is the responsibility of the applicant to ensure there is sufficient parking accommodations for their clients. Mathre suggested that daycare employees should use public parking available at Kimball Park during drop-off/pick-up to allow clients to park on the existing driveway on the subject property.

Tritsch closed the public hearing.

Olson asked whether this operation would require a conditional use permit if the applicant lived on the subject property. Gibbons stated this particular operation would require a conditional use permit as it provides care for more than six children.

Vargas asked the applicant how many children enrolled in her daycare center live in close proximity of the surrounding neighborhood. Tolle stated three children live near the subject property. Vargas asked the applicant if she would address complaints regarding employees disposing of cigarettes on other properties or on the street. Tolle confirmed she would address this issue. Vargas asked the applicant if she would willing to ask her employees to use public parking available at Kimball Park for the next 60 days until the existing driveway is expanded. Tolle confirmed she would be willing to take this measure to address traffic concerns. Gibbons stated Staff had discussed this option with the applicant, and noted that employee parking at Kimball Park should be limited to drop-off/pick-up hours.

Behrens asked the applicant if she would be willing to use the existing garage for employee parking. Tolle stated she is currently storing furniture in the garage, but that she would be willing to clean it so it can be used for additional parking.

Tritsch asked whether the width of the driveway approach could increase if the existing attached garage contained additional parking spaces. Gibbons stated the Public Works Department regulates the width of driveway approaches, and noted that it is not uncommon for them to allow a driveway approach to match the width of the garage. Gibbons also stated it would be unlikely that an additional parking stall could be added to the existing attached garage due to the existing configuration of the home and its placement on the subject property. Gibbons stated Staff had also recommended the applicant to establish a staggered drop-off/pick-up schedule to further alleviate traffic conditions in the area.

Motion made by Vargas, second by Behrens, to approve the request of Shala Tolle for a conditional use permit to allow 'day care services' establishment in an R-1/Single-Family Residential District on property legally described as the North 35 feet of the West 50 feet of the South 135 feet of Lot 1, Block 2, Lincoln Acres Annex AND that part of said Lot 1 described as follows, to-wit: beginning at a point which is 238 feet South of and 50 feet East of the Northwest corner of said Lot 1, thence due South parallel to the Westerly line of said Lot 1 to the North side of North Linden Avenue right-of-way, same being the South side of said Lot 1, thence Easterly and Northerly along the Southerly and Easterly side of said Lot 1, same being the Westerly side of Raymond Avenue right-of-way, to a point directly East of the place of beginning, thence West to the place of beginning, City of Council Bluffs, Pottawattamie County, Iowa, based on the following findings of fact:

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 contains 10,275 square feet in area, which exceeds the minimum lot size requirement in the R-1 District. The size of the subject property is adequate for the operation of a neighborhood-scale childcare center facility.*
2. *Adequate utility, drainage, and other necessary facilities or improvements have been or will be provided. The subject property is an existing lot of record with adequate facilities. No other utility service extensions and/or infrastructure improvements are necessary for the childcare center to continue operations 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 direct access onto Linden Avenue and Raymond Avenue, which are public roadways. The applicant presented three alternatives to address traffic congestion concerns relative to the operation of the childcare center. The Community Development and Public Works Departments find that the applicant's proposal to widen the existing driveway (Parking Alternative #1) is acceptable as it would allow her to address traffic concerns relative to the childcare center by providing a sufficient amount of off-street parking on the subject property to meet minimum requirements. The portion of the existing driveway contained within the private property shall be widened in accordance with Parking Alternative #1. However, the driveway approach located in the public right-of-way may only be widened in accordance with Public Works standards. The applicant shall submit a fully-dimensioned parking plan and complete the proposed driveway expansion within 60 days of the Board's decision.*

In addition to the proposed expansion of the driveway, the Community Development Department recommends that the applicant implement a drop off/pick up schedule that ensures all parking associated with the childcare center is contained on site and does not spill over onto Linden Avenue.

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 existing childcare center is already registered with the State of Iowa. The applicant shall also comply with all other federal, state and local laws and requirements for the use. This shall include submitting a set of plans prepared and sealed by an architect/design professional to the Council Bluffs Permits and Inspections Division for the change of use of the building from a residential single-family home to a childcare center within 60 days of the Board's decision.*
5. *All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties. All outdoor lighting shall comply with the standards in Section 15.24.050, Lighting Controls, of the Council Bluffs Municipal Code (Zoning Ordinance).*
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 existing childcare center is compatible with the surrounding neighborhood as this type of business provides an essential service that supports residential development. If operated in accordance with the comments and conditions outlined in this report, the existing childcare center will have no adverse impact on the surrounding neighborhood.*

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 applicant has not proposed to construct any new buildings or building additions as part of the operation of the childcare center. Any new buildings or building additions constructed on the subject property shall comply with R-1 District site development standards. Any new buildings or building additions proposed to be constructed on the subject property in association with the operation of the childcare center shall be considered substantial modifications to the conditional use permit and thus shall be reviewed and approved by the Zoning Board of Adjustment prior to the commencement of any construction.*

The existing privacy fence is considered acceptable to enclose the outdoor playground area. The applicant is responsible for the continued maintenance of the fence, in accordance with Section 15.24.040(F) of the Council Bluffs Municipal Code (Zoning Ordinance). Additionally, the fence shall remain in place while the childcare center is in operation. If the fence has to be removed, the applicant shall be required to replace it within 30 days of removal. Any new fences proposed to be installed on the subject property shall comply with the standards in Section 15.24.040, Fence Regulations, of the Council Bluffs Municipal Code (Zoning Ordinance).

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 operated in accordance with the comments and conditions outlined in this report, the existing childcare center will have no adverse impact on the property values of existing residential uses in the surrounding area.*

The conditions of approval are as follows:

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. This shall include retaining the childcare center's registration with the State of Iowa and submitting a set of plans prepared and sealed by an architect/design professional to the Council Bluffs Permits and Inspections Division for the change of use of the building from a residential single-family home to a childcare center within 60 days of the Board's decision.
2. The hours of operation shall be Monday through Friday 6:30 A.M. to 5:30 P.M., as indicated in the applicant's letter of intent.
3. Any new buildings or building additions constructed on the subject property shall comply with R-1 District site development standards.
 - a. Any new buildings or building additions proposed to be constructed on the subject property in association with the operation of the childcare center shall be considered substantial modifications to the conditional use permit and thus shall be reviewed and approved by the Zoning Board of Adjustment prior to the commencement of any construction.
4. All off-street parking areas, drive aisles, circulation routes and exterior storage areas shall be constructed of hard surface pavement and shall be designed to comply with the standards stated in Section 15.23, Off-Street Parking, Loading and Unloading, of the Council Bluffs Municipal Code (Zoning Ordinance).

- a. The portion of the existing driveway contained within the private property shall be widened in accordance with Parking Alternative #1. The driveway approach located in the public right-of-way may only be widened in accordance with Public Works standards.
 - b. The applicant shall submit a fully-dimensioned parking plan and complete the proposed driveway expansion within 60 days of the Board's decision.
5. The applicant shall implement a drop off/pick up schedule that ensures all parking associated with the childcare center is contained on site and does not spill over onto Linden Avenue.
 6. The existing privacy fence is considered acceptable to enclose the outdoor playground area. The applicant is responsible for the continued maintenance of the fence, in accordance with Section 15.24.040(F) of the Council Bluffs Municipal Code (Zoning Ordinance). Additionally, the fence shall remain in place while the childcare center is in operation. If the fence has to be removed, the applicant shall be required to replace it within 30 days of removal. Any new fences proposed to be installed on the subject property shall comply with the standards in Section 15.24.040, Fence Regulations, of the Council Bluffs Municipal Code (Zoning Ordinance).
 7. All signage shall be permitted separately prior to installation and shall comply with the standards in Chapter 15.33, Signs, of the Council Bluffs Municipal Code (Zoning Ordinance).
 8. All outdoor lighting shall comply with the standards in Section 15.24.050, Lighting Controls, of the Council Bluffs Municipal Code (Zoning Ordinance).
 9. The applicant shall obtain a waste bin/smoking receptacle for cigarette disposal.
 10. Employees shall use public parking available at Kimball Park during drop off/pick up to allow parents to park on the existing driveway at this site until required parking improvements are completed.
 11. Any modifications to the approved conditional use permit which substantially alters the design, layout, configuration, and/or appearance of the project shall be reviewed and approved by the Zoning Board of Adjustment prior to such changes being made. Minor modifications to the approved conditional use permit that result in a design that is considered compatible with the overall development may be administratively approved by the Community Development Director or their designee.

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

- B. CASE #BA-23-003: Public hearing on the request of Harley E. Sanwick Sr. for a 3.5 foot side yard setback variance from Section 15.09.050, *Site Development Regulations, R-2/Two-Family Residential District* of the Council Bluffs Municipal Code (Zoning Ordinance) to allow a home addition to have a 1.5-foot interior side yard setback, as opposed to the required 5 feet, on property legally described as the West 1/2 of Lot 9, Block 14, Hall's Addition, City of Council Bluffs, Pottawattamie County, Iowa. Location: 914 Avenue F

Gibbons provided an overview of the request.

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

Gerald Pogge, Sr., 3209 Avenue 'K,' Council Bluffs, IA 51501, spoke as the contractor for the home addition project. Pogge stated the addition was built in accordance with the plans approved by the City of Council Bluffs. Pogge stated he would have modified the layout of the addition to ensure all setback requirements were met if it had been brought to his attention at the time of building permit review. Pogge also stated the walls of the addition had been fire-rated in accordance with building code requirements.

Gibbons clarified the variance would only be applicable to the addition and would not apply to any future buildings or additions on the subject property.

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

Motion made by Olson, second by Skudler, to approve the request of Harley E. Sanwick Sr. for a 3.5 foot side yard setback variance from Section 15.09.050, *Site Development Regulations, R-2/Two-Family Residential District* of the Council Bluffs Municipal Code (Zoning Ordinance) to allow a home addition to have a 1.5-foot interior side yard setback, as opposed to the required 5 feet, on property legally described as the West 1/2 of Lot 9, Block 14, Hall's Addition, City of Council Bluffs, Pottawattamie County, Iowa, based on the following findings of fact:

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 subject property contains two platted lots of record (Lot 10 and the west ½ of Lot 9, Block 14, Hall's Addition). The home and its addition are located on the portion of the property legally described as the west ½ of Lot 9, Block 14, Hall's Addition, which is only 27.5 feet wide as opposed to the required 50 feet in the R-2 District. The home on the subject property was originally built on this narrow parcel before the parcel was combined with Lot 10.*
2. *Because of such disadvantage, the owner is unable to make reasonable use of the affected property. Because the property consists of two platted lots that have not been replatted into one, the owner has the ability to sell one lot separately from the other in the future. This makes the construction of a home addition difficult, as an addition of the size built would need to be shifted west to comply with easterly side yard setback requirements. Shifting the addition west would place it over the established boundary between the two platted lots, creating a nonconforming situation if one lot were to be sold separately at any point.*
3. *The disadvantage does not exist because of conditions created by the owner or previous owners of the property. The home on the subject property was built in 1920 on the westerly ½ of Lot 9, Hall's Addition. At the time, the City had not adopted a zoning ordinance. When zoning was first adopted in Council Bluffs in 1927, the lot and the side yard setback became legal nonconforming.*
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 requested variance would not grant a special privilege, as many other lots in the area are smaller than current zoning would allow and contain structures with nonconforming setbacks. There is also precedent in the vicinity of variances granted to allow nonconforming setbacks for residential additions (Cases #BA-79-038 and #BA-02-009).*
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. Granting a variance to*

allow the home addition to have a nonconforming side yard setback would not be contrary to the public interest, and would be in harmony with the purpose and intent of the zoning ordinance, as it would resolve a hardship preventing a home addition of reasonable width from being permitted on the property.

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

9. OTHER BUSINESS

A. Items of interest: Gibbons stated there were no additional items of interest to discuss.

10. ADJOURNMENT – Tritsch adjourned the meeting at 4:46 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.