

BOARD OF ADJUSTMENT

DYERSVILLE, IOWA

Lower Level Council Chambers

DATE: August 15, 2018

THE ZONING BOARD OF ADJUSTMENT IS A QUASI-JUDICIAL BOARD CREATED BY THE CITY OF DYERSVILLE. THE BOARD'S PURPOSE IS TO DECIDE ON APPLICATIONS FOR VARIANCES FROM THE ZONING ORDINANCE (CHAPTER 165 OF THE MUNICIPAL CODE), APPEALS OF DECISIONS OF THE ZONING OFFICIAL, AND APPLICATIONS FOR SPECIAL PERMITS AND FOR EXCEPTIONS REQUESTED UNDER THE ZONING ORDINANCE.

WE ARE AN INDEPENDENT BOARD OF CITIZENS AND NOT PART OF THE CITY ADMINISTRATION. WE ARE SERVED IN OUR EFFORTS BY A CITY ATTORNEY AND STAFF MEMBERS.

MEETING CALLED TO ORDER: 6:00 P.M. by Chairperson Klostermann

ROLL CALL: Present: Board Members: Steve Boeckenstedt, Jeff Geistkemper,
Jeff Jacque, Mary Klostermann, Steve Timp (via phone)

Absent: Robin Bauer

Item #1: Election of Chairperson

Jeff Jacque nominated Mary Klostermann for Chairperson. Motion seconded by Jeff Geistkemper

Voice Call Vote:

Ayes: Steve Boeckenstedt, Jeff Geistkemper,
Jeff Jacque, Mary Klostermann, Steve Timp,

Nays: None

Motion Carried

Item #2: Election of Vice Chairperson

Jeff Jacque nominated Steve Boeckenstedt for Vice Chairperson. Motion seconded by Jeff Geistkemper.

Voice Call Vote:

Ayes: Steve Boeckenstedt, Jeff Geistkemper,
Jeff Jacque, Mary Klostermann, Steve Timp,

Nays: None

Motion Carried

Item #3: Approve Minutes of the June 20, 2018 Meeting.

Chairperson Klostermann asked for questions or comments regarding the minutes and there were none.

Jeff Jacque made a motion to approve the minutes of the June 20, 2018 Meeting. Motion seconded by Steve Boeckenstedt.

Voice Call Vote:

Ayes: Steve Boeckenstedt, Jeff Geistkemper,
Jeff Jacque, Mary Klostermann, Steve Timp,

Nays: None

Motion Carried

CASE NO. 04-2018

TYPE OF REQUEST: Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5) of the City Code. Request submitted by Chad Ellis with Rose Garden LLC.

(CASE SHEETS ATTACHED)

BOARD OF ADJUSTMENT CASE SHEET

August 15, 2018

THE ZONING BOARD OF ADJUSTMENT is authorized to grant a Variance or Special Exception provided **ALL OF THE FOLLOWING REQUIREMENTS** have been addressed:

I. UNNECESSARY HARDSHIP:

To support a Finding of Unnecessary Hardship, the Board must, upon competent evidence, determine:
That the land in question cannot yield a reasonable return if used only for the purpose allowed in the zone.

A. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the Zoning Ordinance itself.

B. The use to be authorized by this variance will not alter the essential character of the area.

II. THE VARIANCE will not be contrary to the Public Interest.

III. THE SPIRIT of the Ordinance is protected.

IV. SPECIAL EXCEPTION:

Use of a property not otherwise permitted by Ordinance but permitted as Special Exception Uses as stated in the Dyersville Municipal Code.

CASE NO. 04-2018

TYPE OF REQUEST: Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5) of the City Code. Request submitted by Chad Ellis with Rose Garden LLC.

An email from Steve & Sandy Menke that the Recording Secretary Lori Panton received was given to the board prior to the meeting.

Chad Ellis, developer was present and stated he is requesting a special exception for off street parking for his apartment complex. He handed out floor plan copies to the board. He stated he has 41 units with 45 underground parking spaces for tenants and 17 spaces above ground in the parking lot for guests. He doesn't think they will be using any off-street parking. Board Member Boeckstedt asked when he plans to begin construction. Ellis said he is waiting for the architect to finish the plans. Chairman Klosterman asked if the exception use was just for parking.

City Administrator Mick Michel advised under the code, multi-family dwellings are allowed by the Board of Adjustment if off street parking requirements are fulfilled. This means one parking spot per dwelling unit. The only concern for the Board is about parking. This is an administrative hearing, so the scope of work is very limited. Michel read code section 165.24(5)(j). The board needs to determine if enough off-street parking is available. Klostermann asked if underground parking is acceptable. Michel advised it is.

Chairperson Klostermann wanted to know what this location is zoned. Michel advised it is zoned Commercial and multi-family dwellings are allowed if off-street parking is provided for each unit. Klosterman confirmed that off-street parking is the provision that needs to be met. Board Member Geistkemper asked Ellis if every unit in the facility would have a parking spot. Ellis advised they would, plus a few extra with handicapped spots also available.

Chairperson Klostermann asked if anyone wanted to speak in favor and there was no response from the audience.

Chairperson Klostermann asked if anyone had questions or wanted to speak regarding the issue. Sandy Menke, representing her mother-in-law Rosemary Menke (an adjoining property owner), asked if this meeting was only regarding the parking because that was not specified in the notice that was sent. Klostermann and Michel both stated the boards only consideration is the matter of parking. Menke stated that was not indicated on the letter sent to everyone and it is a little confusing. Michel reviewed a copy of the letter and stated it is a general form letter with a copy of the agenda. It is a letter sent to adjoining property owners letting them know of the meeting and the agenda references the multi-family dwelling request. Menke states she doesn't think anyone receiving the letter would understand that. Menke asked again if the only thing being considered tonight was parking. Michel advised the Board of Adjustment can only hear on what is front of them and their scope is limited to only what the code states. If this was a zoning hearing, that would take into consideration the land use. Menke stated the questions they submitted are not contesting that, just questioning more about the structure, layout and how it will impact the neighborhood. Michel advised he thinks Ellis would be happy to answer their questions, but it would be outside of this meeting. Michel can take questions on setback requirements because they are under the city code. Michel advised the code is available online or copies can be made at city hall. Michel provided the setbacks from code section 165.24(1)(c). Those setbacks are considered during the building permit process. Menke asked where the setback is considered from, the alley or where. Michel explained according to code, the front yard is considered along 13th Avenue; the rear yard is to the north; and side yards are on the west and east. Menke said she is just trying to determine where the structure will be located. Michel advised he does not have the building permit with him but would be happy to review that with her after the meeting.

Steve Menke wanted to know where the water run-off is going to flow after a building and hard parking lot is built. Right now, there is no drainage in that area. Michel advised storm water control has been addressed with Ellis.

Werner Helmer, representing Joe Ertl, had questions regarding the hearing notice. It states the request was submitted by Chad Ellis with Rose Garden LLC. Helmer asked Ellis if he is with Rose Garden LLC. Ellis said he was. Helmer stated that the Secretary of State website lists Rose Garden LLC administratively dissolved 8 years ago. Ellis stated it is Rose Garden Properties. Helmer said the public hearing request was from Rose Garden LLC. Michel stated the request is from Chad Ellis with Rose Garden LLC. Helmer provided a copy to the board of the Secretary of States information and stated Ellis has no legal standing to be here. Klostermann asked if this was a misprint or something. Recording Secretary Panton stated she took the requestor information from the letter submitted. The letter was submitted by Chad Ellis, Rose Garden LLC. Helmer stated the

corporation, according the Secretary of State has been dissolved and these proceeding are invalid.

Joe Ertl, 507 13th Avenue SE, asked if the meeting was being recorded. He was told the audio is being recorded. He wanted to request a re-zoning on a section of his property, parcel 073147703. Klostermann advised this is not a zoning board. He wants the same consideration as everyone else and the board should hear that before they rule. Klostermann advised this is already zoned commercial, the multi-family structure is permitted if the required setbacks and parking criteria are met. Klostermann asked Michel for confirmation. Michel advised that what Ertl is saying has no bearing on their decision. Ertl can contact him regarding his request and he will help him. Ertl also wanted to know what will be happening with the taxes. Klostermann advised the board cannot consider the issue of taxes; his concerns need to be brought up to the city. Ertl stated this is a public meeting and they can certainly hear his concerns. Michel advised that Ertl, or anyone, can speak if they wish but it will have no bearing on the issue. Ertl stated the board is going to approve this because of the way the agenda reads. Jacques states that code 165.24(5) addresses the parking issue for the Board of Adjustment. Ertl felt this is already a done deal. Klostermann advised the board still needs to vote on it. The board needs to consider if the off-street parking criteria is met. Ertl continues to talk about issues with taxes and thinks the board should consider this. He thinks the board can deny or table the issue. They were originally told this was going to be a senior living area, now he is hearing it is going to be affordable housing.

Sherry Berger, adjoining property owner, stated that originally in the newspaper it was stated it was going to be a senior living facility. Is that now changing. Ellis stated it is still a senior living facility. Berger wanted to know why this is now a multi-family dwelling and she has heard there is another level on this building. Michel explained the definition of multi-family means more than one unit. The code section does not distinguish between senior living and affordable housing. The code says multi-family is more than one person on that property. This development falls under multi-family dwelling. An affordable housing unit would also fall under multi-family. Berger also addressed the parking. If all spots are filled, are they going to park on 6th Street with no sidewalks with a lot of kids, walkers, and joggers. Will this create more accidents. Michel advised that is why this code section was written to help with parking issues. Berger said she was confused when they said it was a senior facility and then hearing multi-family dwelling. Berger also heard there was going to be another story making it three stories. Ellis stated there is no third story. Board member Boeckenstedt asked where these questions should be directed. Michel advised either to Ellis or himself. If he cannot answer it, he will direct them in the right direction. There is a lot of fear out there and the city has policies and procedures to take care of them. Storm water has been addressed and has been handled; on-street parking is a police issue and the code addresses how that is handled; setbacks are addressed in the zoning code; off-street parking is also addressed in the zoning code. The definition of multi-family dwelling is addressed in chapter 165 of the code (he reads the definition). Michel will help anyone with questions or concerns. He wants to make sure the public has the time voice their concerns. He doesn't want anyone to feel they were not heard.

Joe Ertl wanted to know when the zoning was changed on the property. Michel advised it has not been changed for this matter and has not been changed recently. He would need to research if it was ever changed since 1963. This is zoned commercial and is adjacent

to industrial and residential. Geistkemper asked how far Michel is on the permit process. Michel advised he confirms the zoning, if it is in the flood plain, and checks the setbacks. Since the zoning is commercial he cannot finalize the permit until a board of adjustment decision is made. Ertl asked if there has been a site plan submitted. Michel advised he received all the required information and documentation for the permit process. The permit has been reviewed but cannot be approved until the board makes their decision. Ertl asked if the use is compatible. Michel advised it is, providing the board grants approval based on the requirements of section 165.24(5)(j) of the city code (he reads the code section). Ertl asked if this is the most appropriate use for the land. Geistkemper advised the board cannot comment on that as it is not their jurisdiction. Ertl stated it was mentioned there is a need for low income housing, based on the size of this lot it can be divided into 10 affordable lots. Ertl questioned how many people can live here, there should be restrictions of the amount of people per unit. Ertl feels there is probably a better location for this unit than on that lot. Ertl wanted to know how the decision on this request will affect other requests. Ertl would like a study on what affect this building will have on the surrounding area and how it will impact taxes and is worried about what it will do to the value of the homes in the area. Ertl is concerned about the green space; he asks if the board has seen a site plan; he would like to see one. Klostermann stated a plan was part of their agenda packet. Ertl asked if they just received it tonight and Jacque advised they received it a week ago. Michel provided Ertl with the drawing that Ellis provided and was part of the agenda packet.

John Ulrich, adjacent property owner, advised he is a real estate investor and has been for some time. Ulrich said there are 41 units and studies show 45% of people use parking spaces for storage and a lot of people have more than one car so a lot more spaces will be needed. Ellis stated that each unit will have a storage unit separate from the parking space. The parking area will be like a parking ramp. Ulrich also stated a bus stops right across the street from the driveway and feels that will be unsafe. Klostermann advised that is something the school district will need to address and possibly move it. Ulrich is concerned about street parking and expressed concerns about the winter snow removal.

Werner Helmer addressed the board again to know if the board is going to rule on whether the application process is valid or invalid. Michel stated he is going to work on that. Michel asks Ellis to address the podium for questions to clarify the ownership. Michel advised he has identified the parcel as 0731437001 and that is the parcel listed on the agenda and that is the parcel on the request. He has found this parcel on the Dubuque County Beacon site and the Brief Tax Description identifies it as Lot 1 of Castings Corner. The deed was recorded on 2/8/18 under deed and book number 2018-1458. It shows the deed holder as Chad Ellis Construction Company Inc, 3405 Jackson St, Dubuque IA 52001. Michel asked Ellis if he is Chad Ellis, Ellis replied "yes". Michel asked if he is the owner of Chad Ellis Construction Company Inc., Ellis replied "yes". Michel stated on July 3, 2018 he wrote to the Board of Adjustment "Chad Ellis, Rose Garden LLC", did you make an error on that LLC? Ellis replied he must have made a mistake or made a typo. Michel stated he is trying to establish the record of ownership, so the board can move on to make their decision. Michel proceeded and asked, as the deed holder, did you, Chad Ellis request to the Board of Adjustment a special exception request for your property, Ellis replied "yes". As for the public hearing notice, it states Chad Ellis, with Rose Garden LLC. The board can decide whether they want to table the matter and have it reposted. The city's position is that it is clear that Chad Ellis is the property owner and he is also the owner of Chad Ellis

Construction Company Inc and he just made a mistake on Rose Garden LLC. Whether or not this meeting needs to be reposted will be forwarded to the city attorney for his opinion. The board will need to determine if this will affect their decision and how they want to handle it. Michel doesn't see it as an issue. Helmer can't believe someone would submit a request under an LLC that was dissolved 8 years ago. He could have easily just put it under his own name. He is not sure what his intent is under Rose Garden LLC.

To get back on track, Michel read code section 165.24(5)(a-k). The consideration tonight is regarding subsection "J" regarding parking. The issues of noise, odor, dust and vibration can also be taken under consideration.

John Ulrich provided a protest to be filed with the City Clerk. Panton (Deputy Clerk) accepts that on behalf of the City Clerk.

Michel understands people have concerns but again advised this is an administrative hearing with a limited scope. The board can continue to hear more comments if they want.

Joe Ertl addressed the site plan. He is concerned about the distance on the north side between the property line and the building or patios. Ellis advised the distance is more than 15 feet. He has placed the structure more to the south to give more room on the north side. Ertl feels this will block sun light in winter to the homeowners on the north. That will affect their heating costs. Ertl would not, if he was a board member, want to consider an issue submitted from an illegal corporation. He recommended it get tabled.

Sandy Menke questioned the setback and wanted to know if the rear of the structure faces north. Ellis advises the rear of the structure is the east. The side will be on north. Menke asked if the 20-foot setback is from the property or from the alley. Ellis stated the alley is a 10 foot easement and each property owner on either side shares half. Ellis stated there are stakes with red flags on the property and the building will in 20 feet from those stakes. Michel advised the structure will be further south than Theisen's is. Menke asked where the entrance to the garage will be, Ellis advised from 13th Avenue. Menke wanted to know which side the patios will be on; Ellis advised the north and east side. Menke asked how tall the structure will be: Ellis advised 2 stories, around 32 feet.

John Ulrich advised that in his line of work he has seen how the housing bubble went out west. He has seen it build, boom and bust. Ulrich sees the massive building happening in surrounding cities and it is not that far away. It will hit Dyersville and when it does it will be big. Also, if you look at what the new generation is coming into, young people are not going to be able to afford the empty houses that are going to be on the market. The city needs to be building units for the younger generation. The older generation would rather remain in their homes. In the last few months new housing developments have slipped.

Linda Gaul, adjacent property owner, stated this building is going to be right in their back yards. They will never get sunlight. There are 21 names on the protest sheet. These people have lived here their whole lives. They should not have to deal with people not respecting what they have. She wanted to know if the structure could be moved any further south.

Sally Brant, adjoining property owner, stated she has been asking questions regarding this property since before Theisen's was built. She was told local contractors were interested in the property for housing development. The board is being bombarded by these questions because it wasn't property presented to the neighborhood. Out of courtesy, everyone in the neighborhood and area should have been notified.

Werner Helmer was still concerned about the Rose Garden LLC. Ellis has a nice marketing display on the property with an email address about Rose Garden Living, what is that. Ellis stated it is just an email address. Helmer's concern is about how this is presented.

Chairperson Klostermann asked if there were any more comments from the audience. There were none.

Board member Boeckenstedt had questions for Ellis regarding Rose Garden LLC. Boeckenstedt asked if he knew who Richard Stochl was, Ellis said he did not. Boeckenstedt asked who the actual owner of the property is. Ellis said Rose Garden Properties. Michel advised the county records indicate Chad Ellis Construction Company Inc as the official deed holder. Bockenstedt stated he thinks the matter should be tabled. Michel agreed and said the issue will be sent to the city attorney for an opinion on how this should be handled. If it is tabled, the issue will be whether the publication has been perfected or not. We will rely on the city attorney's opinion on that. His opinion will determine whether it needs to be re-published or not. Michel cannot state if this is correct or not but clearly Chad Ellis is the owner of the property. We will get the opinion of the city attorney to determine if this is an error or not. Michel also wanted to make sure the city is giving the correct public notice. Michel agreed this matter should be tabled since the corporation issue was brought up but clearly Chad Ellis is the property owner. It is whether the public notice is correct or not. Klostermann asked if Ellis can be on the meeting next month. Michel advised there are publication deadlines that need to be met so it will depend on when we get the opinion of the city attorney. Michel stated the city took the information that was submitted and used that for publication. Michel wanted to make sure the city is giving notice to the public correctly.

Board Member Geistkemper stated the Beacon website shows the property zoned industrial and wanted to know if that is an error. Michel advised the county zoning is for the purposes of taxation and not for land use. The land use falls under the city zoning.

Michel further explained the code section lays out setbacks, city staff lays out how to handle storm water control, parking is addressed by the code and to ensure that there is off-street parking for each unit.

After no further discussion, Jeff Jacque made a motion to table the Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5) of the City Code until the staff can get an opinion on whether the publication was served appropriately. Motion was seconded by Steve Boeckenstedt.

Roll Call Vote: Ayes: Steve Boeckenstedt, Jeff Geistkemper,
Jeff Jacque, Mary Klostermann, Steve Timp
Nays: None

Motion Carried

ADJOURNMENT: Motion: Boeckenstedt Second: Geistkemper Time: 7:17 pm
Voice Call Vote: Ayes: All Nays: None

Motion Carried

Lori A. Panton

Lori A. Panton – Recording Secretary

8/15/18

Date