

MINUTES
August 3, 2021 – 5:30 p.m.
Zoning Board of Adjustment
Muscatine City Hall
City Council Chambers
Online GoToMeeting

Present: Nancy Jensen, Robert McFadden, Larry Murray and Julie Wolf

Excused: Jodi Hansen

Staff: April Limburg, Planner, Community Development
Christa Bailey, Office Coordinator, Community Development

Vice Chairperson Julie Wolf opened the meeting at 5:30 p.m. and read the mission statement.

Minutes:

Robert McFadden motioned to approve the minutes submitted for the July 6, 2021 meeting; seconded by Larry Murray. All ayes, motion carried.

Appeal Cases:

Appeal Case No. 45, filed by Paul Neff, owner of Pete's Tap, to allow for the expansion of the existing building on the property. The property is a lawful nonconforming use and the existing nonconforming use may continue so provided no structural alterations are made by Section 10-24-2 of City Code.

Paul Neff, 3370 Water St, was present to discuss the appeal. Mr. Neff explained that the building in which Pete's Tap is located has limited seating which prevents his business from growing so he would like to construct an addition to allow for additional seating. Mr. Neff further explained that he would first erect a temporary screened room/porch in the rear of the property until he can secure the funds to construct a permanent addition that would house new bathrooms and additional seating.

Robert McFadden questioned whether the temporary screened room/porch would be an attached addition and Mr. Neff responded that he would erect a carport from Menards that will not be attached to the existing building to act as the temporary screened room/porch. Mr. McFadden asked if it would be similar to the structure at Mike's Hilltop Tap and Tara Peterson, 104 Grover St, the manager for Pete's Tap commented that it would not be exactly the same as Pete's Tap would be a separate sheltered structure. Mr. McFadden then inquired if the plan is to eventually employ more people, to which Mr. Neff replied yes.

Larry Murray questioned if the City had any concerns about parking and April Limburg explained that Pete's Tap is also currently going through the process of acquiring more property by requesting the City to vacate and sell a portion of the surrounding right of way to Pete's Tap, which once the purchase of the vacated right of way is finalized the additional property acquisition will meet the parking requirements.

Robert McFadden motioned to approve the appeal case; seconded by Larry Murray. All ayes, motion carried.

Appeal Case No. 46, filed by Johnathon Estabrook to allow for the construction of a metal 40'x64' building on the back of the property located at 10 Byron Ln. The proposed garage would cause the property to exceed by 2,560 square feet, the maximum cumulative square footage of all accessory buildings and attached garages as allowed by Section 10-20-2(B)(2) of City Code.

Nathan Mather, 2682 Tom Sawyer Rd, a lawyer representing Johnathon Estabrook was present to discuss the appeal on Mr. Estabrook's behalf. Mr. Mather explained the Estabrooks wish to construct a playhouse and the construction location is limited to the rear of the property due to steep elevation issues. Mr. Mather continued that he studied the City

ordinances and the appeal cases the Zoning Board of Adjustment has reviewed in the recent years and that the only issue on the City's behalf they have been alerted to is the size limitations for accumulated accessory structures. Mr. Mather claimed to have spoken with most of the neighbors to address their concerns they raised at the previous appeal case meeting and that most of them have now retracted or modified their concerns. Mr. Estabrook commented that the proposed building would be used for storage as well as a playhouse/activity center for their children and their friends. Mr. Estabrook added that there is already some vegetation in place including 50-75 arborvitae trees that are 6-7 foot tall and will continue to grow to act as screening from the condo complex but the building design will be attractive as well.

Julie Wolf questioned if the proposed building size and purpose is the same as the Estabrook's previous appeal and Mr. Estabrook answered yes. Larry Murray commented that the previous appeal raised concerns about the building being metal and inquired if that aspect had been changed. Mr. Mather stated that the building material and footprint have remained the same but the exterior design elements are much more attractive and will be designed to look like a house.

Mr. Mather challenged if the Estabrook's appeal is a hardship and if there is good cause for the Board to deny the appeal, as he believes the proposed building will not result in lowering any property values as there is already a metal building in that area and that in previous appeal cases the hardship has been defined as a personal burden to the owner. Mr. McFadden commented that the Estabrook property is beautiful so he cannot imagine that they will build anything that would be a detriment to their property. Mr. Mather agreed stating the Estabrooks actually have the most to lose.

Larry Murray stated that he spoke with the school district and while they are not opposed to the building, they do have some stipulations concerning the construction access the Estabrooks would need to address if the appeal were to be approved.

Jo Ann Albey, 2617 Termini Dr, the association president asked the Board to deny the appeal. Ms. Albey addressed the email from Michael Nelson that was in the exhibit documents provided by the Estabrooks, stating that Mr. Nelson does not live in the portion of Termini Dr that is directly adjacent to the proposed building location so he would not be as greatly affected. Ms. Albey explained that the new appeal case request does not provide any new or different information from the previous appeal and that the appeal does not show hardship or good cause to allow the construction.

Joanie Hansen, 2609 Termini Dr, stated a variance was already granted in 2016 to construct a garage with a basement so she feels another one should not be allowed. The Board already denied the appeal case and Ms. Hansen requests the Board to continue to deny the appeal case. The material of the proposed building is described by Mr. Mather as being similar to the condos but the material is not the same.

Becky Whitmore, 2615 Termini Dr, shared that Mr. Mather did not contact the adjacent property owners, he contacted Joann Albey who in return asked him a question but Ms. Albey did not receive a reply. Ms. Whitmore added that the vegetation Mr. Mather claims will block the view of the building is only 2-3 feet in height, not 6-7 feet tall. Ms. Whitmore also questioned why the metal building could not be constructed closer to their house instead of at the rear of the property.

Ron Gear, 2611 Termini Dr, stated changing the name of the building does not actually change the structure or appearance of the metal building and the presented appeal does not show hardship so he asked the Board not to reverse the prior denial.

Ruth Carver, the previous property owner of 10 Byron Ln and current owner several undeveloped parcels in that area, declared that she is opposed to the appeal as there is no reason for a building of that size and there is already a lot of development in that area.

Mr. Mather declared the location of the structure is not the problem per code, only the size is, and the Estabrook's large property cannot be used to its full potential due to the size limitations, which causes a hardship. Mr. Mather reiterated that he spoke with realtors who gave him an informal statement claiming the building would not devalue the surrounding properties. Robert McFadden commented that the building material has not changed since the first appeal which is what

he believes some of the adjacent neighbors are against. Julie Wolf stated that her understanding is that the adjacent property owners do not want any type of building, no matter the material, to be constructed in that location and the opposed property owners present at the meeting confirmed Ms. Wolf's understanding. Mr. Mather asserted the Board should not consider the neighbors' opinions but they are willing to change the siding and building materials if that would alter the Board's decision.

Cheryl Gear, 2611 Termini Dr, discussed the appeal cases Mr. Mather presented as examples of appeals that the Board had approved without the appellant proving undue hardship and addressed the fact that most of the examples provided do not relate to this appeal in any way. Ms. Gear added that Mr. Mather alleges the building will not lower property values and stated in the appeal proof would be provided but no such proof was included in Mr. Mather's presentation. Ms. Gear also brought up that Mr. Mather claimed to have contacted all 12 property owners but he did not as he did not contact the 4 property owners who would be affected the most. Ms. Gear continued that Mr. Mather took pictures from the upper side of the condo complex to present to the Board as proof of vegetation blocking the view, which it does for the condos in that area, but he did not include pictures from the view of the 4 most adjacent condos as the vegetation abutting those 4 condos does not block the view.

There was discussion amongst the Board Members and Mr. Mather about the examples of previously approved appeal cases in regards to how the circumstances involved in those appeals differ from Mr. Estabrook's appeal. During this discussion Larry Murray shared that he would be concerned about the noise level of the kids at the playhouse disturbing the condo residents so he is opposed to the current proposed location. Mr. Mather asked if could inquire with Mr. Estabrook whether other locations are possible and Mr. Murray stated that Mr. Estabrook could request another appeal with an alternate proposed location but the Board is going to vote right now based on the current proposal.

Larry Murray motioned to deny the appeal case; seconded by Robert McFadden. All ayes, motion denied.

Meeting adjourned at 6:38 p.m.

ATTEST:

Respectfully Submitted,

Julie Wolf, Vice Chairperson
Zoning Board of Adjustment

April Limburg, Secretary
Planner I