

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES  
BETTENDORF BOARD OF ADJUSTMENT  
JULY 10, 2008  
5:00 P.M.**

Chairman Stelk called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Eikenberry, Howe, McElhiney, Stelk, Voelliger  
ABSENT: None  
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of June 12, 2008.

On motion by Voelliger, seconded by Howe, that the minutes of the meeting of June 12, 2008 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 08-060; 4650 Davis Street (PUD) - A request for a variance to allow a 6-foot high fence in the front yard, submitted by Greg Smart.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

McElhiney stated that she does not believe that the applicant has established a hardship. Stelk concurred.

Howe commented that in the past the Board has determined that it is inappropriate to allow 6-foot high fences on the property line along major thoroughfares.

Voelliger stated that there is a 4-foot high fence in the neighborhood which does not detract from the area.

On motion by Howe, seconded by McElhiney, that the request for a variance to allow a 6-foot high fence in the front yard be denied in accordance with the Decision and Order.

Greg Smart, the applicant, stated that he would be willing to accept a 5-foot high fence located 8 feet from the sidewalk. He indicated that he believes a fence placed at the required setback would look odd because of the existing trees on the property.

Voelliger asked how far the corner of the house is from the sidewalk. Smart stated that it is approximately 30 feet. Voelliger asked if the applicant would be willing to put the fence approximately 15 feet from the sidewalk. Smart stated that if he did so, the trees would interfere with the fence. McElhiney commented that if the fence is placed at the required setback, it would not be impacted by the existing trees. Smart stated that a fence would add value to his home. Stelk commented that this is not always the case.

McElhiney stated that there are no topographical issues with regard to the lot that would justify granting the request.

Soenksen stated that a 4-foot high fence would be allowed to be placed 10 feet from the property line.

Smart stated that he would be willing to place the fence 9 feet from the sidewalk.

Howe stated that he feels that approving the request would set a negative precedent and that the fence would detract from the attractiveness of the thoroughfare.

#### ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 08-061; 4580 Tanglewood Road (R-4) - A request for a variance to increase the allowable height of four condominium buildings from 2 ½ stories to 3 stories, submitted by River Cities Realtors, Inc.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes. He stated that he had received a letter expressing opposition to the request from Jerome Martin, 4470 Tanglewood Road.

McElhiney asked if the vacated right-of-way from the Middle Road reconstruction project would be buildable or if it would be greenspace. Connors explained that the area

currently has utilities, adding that it is likely to remain an easement. He indicated that it might have some berming and landscaping on it with the possibility of a driveway being placed there. McElhiney asked if it would be appropriate for the Board to place restrictions on the development of that property. Connors stated that ultimately the disposition of that property would be the decision of the City Council. Soenksen stated that if the developer chooses to add anything else to the property, he would have to resubmit the revised plans to the city for approval.

Howe asked for clarification regarding the elevation difference between the 3-story structure as opposed to the 2 ½-story building that would be allowed. Connors stated that it would be approximately 10-12 feet taller.

Howe asked what type of unit the ½ story of a building would contain. Connors explained that typically a ½ story would accommodate two loft-style units.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Tom Swanwick, representing the developer, stated that basically a 2 ½-story and 3-story building would be approximately the same height.

Voelliger asked if the creek would be realigned. Swanwick stated that it would not, adding that the buildings would be built on top of the hill and would not be anywhere near the creek. He explained that the vacated right-of-way would be used for storm water detention which would then flow into the creek.

Howe asked if the buildings would appear to be 4 stories tall from Middle Road as a result of the exposed garages. Swanwick explained that only the garage doors or about 25 feet of the building length would be visible as the developer intends to landscape and install a retaining wall.

McElhiney asked if access to the property would be from the private drive to the west, adding that she feels that it would be beneficial to limit access points on Tanglewood Road. Soenksen stated that the issue of the private drive is currently being discussed and that access configuration has not yet been determined. Swanwick explained that Tanglewood Road would be a dead end, adding that there will be a hammerhead to facilitate maneuverability for emergency vehicles. Connors stated that the driveway leading to the Sundholm property will also be moved.

Swanwick stated that a detailed site development plan would be presented to the Planning and Zoning Commission when all of the decisions with regard to access have been made.

Jerome Martin, 4470 Tanglewood Road, asked what the price of the proposed condominium units would be. He submitted photographs of his property in relation to the proposed development. Martin stated that the current proposed plan shows that the access to the proposed buildings would be from his private drive. He indicated that he would not be opposed to side-by-side condominiums, but that the proposed number of units is excessive for the property involved. Martin added that a large portion of the property is in the flood plain and is therefore unbuildable.

Howe commented that many of Martin's concerns would better be addressed at the Planning and Zoning Commission level. Soenksen concurred.

Chad Miller, 4340 Tanglewood Road, stated that he does not believe that the applicant has established a hardship to justify granting the variance.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Eikenberry, seconded by Voelliger, that the request for a variance to increase the allowable height of four condominium buildings from 2 ½ stories to 3 stories be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- c. Case 08-062; 2720 Devils Glen Road (C-3) - A request for an appeal of the Zoning Administrator's decision to prohibit the opening of a car care facility as a Car-X franchise, submitted by Robert Bettendorf. It is the Zoning Administrator's opinion that this represents a material change to the information presented to the Planning and Zoning Commission and City Council for their consideration during the land use amendment, rezoning, and site development plan approval process.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #7 to these minutes.

Howe asked why this issue has been presented to the Board of Adjustment. Soenksen explained that anyone who wishes to appeal a decision made by the Zoning Administrator must first make that request of the Board of Adjustment.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Jeff Paul, attorney representing the developer, stated that Tuffy Associates is a corporation with the rights to issue franchises under both the Car-X and Tuffy names. He explained that the property was rezoned and a site development plan was approved in 2007 in anticipation of a Tuffy franchisee taking over. Paul stated that the franchisee elected not to go forward, adding that attempts were made to find another person to operate the store as Tuffy for over one year. He explained that at that time, a decision was made to open the store as a Car-X as there is warranty work that could be completed there, their trainers are closer in proximity, and the fact that there is not a

Car-X presence in the area. He stated that the only material difference between the two franchises is the sign and that he had been unaware that any further action would be necessary to change the franchisee. Paul stated that the use and the design of the building had already been approved and that there is no reason why the store cannot be operated as a Car-X.

Dan Alias, 3840 Asbury Street, owner of OC Auto Service Center, stated that his business had operated as a Car-X franchise for over 30 years. He explained that in 2001 he had planned to open an expanded business at Devils Glen Road and Belmont Road after having obtained a special use permit, but had subsequently decided to enlarge his current store. He stated that in 2002 Tuffy purchased the Car-X franchise and had indicated that the two types of stores would operate independently. Alias explained that in 2006 he had decided not to renew his franchise with Car-X, adding that he believes Tuffy has been misleading the city with regard to its intentions for the new store. He stated that the two types of store offer very different types of services.

Jim Christian, Director of Company Store Operations for Tuffy/Car-X, explained that the two franchises run identically, adding that he plans to use the same staff for the proposed Car-X store as would have been used for the Bettendorf Tuffy franchise. Christian stated that he feels that a Car-X would have a better chance for success in Bettendorf.

Paul explained that when the project had initially been presented to the city the intention had been for the store to become a Car-X. He stated that when a franchisee who already owns Tuffy stores had approached the company about the Bettendorf store, a decision was made to open it as a Tuffy so that one owner would not own competing stores.

McElhiney asked if the presentation to the City Council would have been materially different if the proposal had been for a Car-X. Voelliger stated that in his opinion there is no difference to the City of Bettendorf whether the store opens as a Car-X or a Tuffy. He indicated that it had been presented to the Council as a full-service auto repair shop. Howe commented that even if the store opened as a Tuffy, there is nothing to preclude it from becoming a Car-X or some other type of franchise in the future.

Connors stated that the reason the case has become before the Board of Adjustment is that it is sometimes difficult in his position to determine whether or not the fact that the proposed development was presented as a Tuffy impacted the Planning and Zoning Commission's and Council's decision to approve the request.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Voelliger, seconded by McElhiney, that the request for an appeal of the Zoning Administrator's decision to prohibit the opening of a car care facility as a Car-X franchise be approved in accordance with the Decision and Order.

Alias stated that his objection has nothing to do with the competition that will occur as a result of the new auto repair shop opening. He indicated that he feels the material issue is the misrepresentation by Tuffy of the type of service that would be offered. He reiterated that he was required by the city to obtain a special use permit for his proposed expansion to operate in a C-2 zoning district.

Howe asked if the C-3 district allows the proposed use. Soenksen confirmed this. Howe asked if the C-2 district would allow it. Connors stated that it would not, explaining that when Alias' proposed expansion site was rezoned, the C-3 district was not appropriate because there were no similarly-zoned properties adjacent to it which would have resulted in spot-zoning. He added that the city had allowed Alias to obtain a special use permit for the C-2 district. McElhiney stated that the city had worked very hard to accommodate Alias at the time his proposed expansion was submitted.

Rich Lopez, special consultant to Dan Alias, stated that Tuffy and Car-X stores do not run the same type of operation. He added that the major concern of the residents to the south had been the noise that might be generated by engine work.

Howe reiterated that the proposed use is allowed in the C-3 district and that the branding of the store is immaterial.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

Soenksen stated that the Board had approved a variance for the building setback for a structure to be built at 2540 State Street. He explained that the configuration of the lot and building have subsequently changed, but that the encroachment into the setback is actually smaller.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:15 p.m.

These minutes and annexes approved

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John Soenksen  
Director of Community Development