

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
JANUARY 14, 2010
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: Beck, Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of December 10, 2009.

On motion by Voelliger, seconded by McElhiney, that the minutes of the meeting of December 10, 2009 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to review and approve the 2009 Board of Adjustment Annual Report.

On motion by Eikenberry, seconded by Voelliger, that 2009 Board of Adjustment Annual Report be approved as submitted.

ALL AYES

Motion carried.

Annual Report is Annex #2 to these minutes.

Item 5. Election of Officers.

On motion by Voelliger, seconded by Howe, that Stelk and McElhiney remain in their offices of Chairman and Chairman Pro Tem, respectively.

ALL AYES

Motion carried.

Item 6. The Board to hold a public hearing on the following items:

- a. Case 09-074; 2820 Villa Court (C-5) – A request for a variance to reduce the required rear yard setback from 20 feet to 14 feet to allow for a 14-foot by 16-foot deck, submitted by Teresa Stori. (Deferred from meeting of December 10, 2009)

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 #3 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #4 to these minutes. He indicated that he had received a letter from the president of the homeowner's association indicating their unanimous approval if a variance is granted. Soenksen added that he also received a letter in opposition to the request from Elmer and Marcie Peter of 2882 Villa Court. He stated that he had also received a letter in support of the request from Gene and Denise Strathdee of 2835 Villa Court.

Soenksen stated that the deck as constructed does not meet code requirements. He indicated that even if a variance is granted, the deck must be removed and rebuilt such that it would pass a building inspection.

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

Teresa Stori, the applicant, explained that she had been informed that a building permit was not necessary for the deck construction and that she had been unaware of a requirement for a variance.

Voelliger asked if the deck had been built prior to the existence of the homeowner's association. Stori stated that it had not.

Voelliger stated that it is his understanding that the deck was built by the developer. Stori stated that it had been built by a contractor.

McElhiney asked if the contractor had obtained a building permit. Stori explained that her contractor told her that a permit was not necessary as there was already a smaller deck in place.

Howe asked what would be necessary in order for the deck to be code-compliant. Soenksen explained that the footings and supports would have to be replaced. Howe asked if the existing footings would have to be removed. Connors explained that they would have to be at least partially removed to do the work properly. Howe commented that it is possible that the entire deck would have to be removed. Connors concurred. Voelliger asked why the deck could not be jacked up in order to access the footings. Connors stated that this would be the contractor's decision, but that in his opinion the proximity to the ground would make that method difficult.

McElhiney asked if the applicant would have been informed of the need for a variance if she had applied for a building permit before construction occurred. Soenksen confirmed this.

McElhiney asked if the applicant would have continued with the project if she had known that a variance was needed. Stori confirmed this.

Howe asked why the applicant had chosen to enlarge the existing deck. Stori explained that the original deck is very small, adding that she would like to have more space.

McElhiney stated that she feels that if the Board approves the variance, it would encourage other homeowners to make the same request. Soenksen explained that another homeowner has already made that request, adding that the board members of the homeowner's association have indicated that no further encroachments would be approved.

McElhiney commented that it is the Board's responsibility to interpret each case as presented. She indicated that no hardship has been established.

Voelliger stated that he believes that residents are entitled to make the highest and best use of their property, adding that he believes that the request is reasonable.

Howe asked why the applicant has not considered adding a concrete patio instead. Stelk commented that another option would be to build a deck that is code-compliant. Stori explained that multiple steps would be required in order to reach the ground as the deck is approximately 4 feet from the ground.

Howe indicated that he shares McElhiney's concerns, especially with regard to the negative precedent that would be set. He commented that he understands that there would likely be no negative impact for the neighbors to the north. Howe stated that if the request had been made prior to construction, he would likely have recommended denial. He reiterated that the deck will likely have to be removed anyway.

Stelk commented that a similar previous request for a property on the south side of the street had been denied.

David Wallace, 6890 Crow Creek Road, stated that it appears as though the orientation of the homes on the lots would preclude the need for variances for most of them. Howe explained that a precedent would be established for the entire city, not just the subdivision in question.

Stelk asked if the homeowner's association has complete authority over this type of construction. Soenksen confirmed this. Howe commented that the homeowner's association would likely have denied the request if the applicant had followed the proper procedures by obtaining a building permit and had been informed of the need for a variance. McElhiney stated that the developer had been aware when the property was platted that there is limited space available for larger decks. She reiterated that no hardship has been established. Voelliger stated that the applicant only needs an additional 6 feet and that homeowners should be able to use their property the way they see fit. He reiterated that he does not believe that it would be necessary to remove the deck in order to meet code requirements.

On motion by Voelliger, seconded by Eikenberry, that the variance to reduce the required rear yard setback from 20 feet to 14 feet to allow for a 14-foot by 16-foot deck be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Eikenberry, Stelk, Voelliger
NAY: Howe, McElhiney

Motion carried.

Decision and Order is Annex #5 to these minutes.

- b. Case 09-075; 2834 Villa Court (C-5) – A request for a variance to reduce the required rear yard setback from 20 feet to 12 feet to allow for a 16-foot by 16-foot deck, submitted by Tarikere Kumar. (Withdrawn)

- c. Case 09-082; 7186 State Street (I-2) – A request for a special use permit to allow a permanent concrete mixing facility, submitted by Pleasant Valley Redi-Mix. (Deferred from meeting of December 10, 2009)

McElhiney commented that the video of the meeting is available on-line and that all Board members have had the opportunity to review it.

Soenksen reviewed the staff report. Staff report is Annex #6 to these minutes.

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

Todd Friemel, the applicant, stated that in February 2009 the Board had unanimously approved a request for a concrete mixing facility for one year at which time permanent approval could be granted if no problems occurred. He indicated that he and his partner have complied with all of the city's requests over the past year. Friemel stated that the business has created 14 jobs and has provided concrete for a number of city projects. He stated that the concrete mixing facility will be permanently enclosed if approval is granted.

Friemel stated that a representative of the Iowa Department of Natural Resources (IDNR) has evaluated the site, adding that the IDNR had complimented the applicants on their silt control measures and street sweeping equipment. He indicated that the IDNR report is available from the city.

Friemel stated that the neighbors have indicated that it is very important for them to have a buffer from the development. He explained that even though most of the homes in question are at least 1000 feet from the development, he plans to continue with the addition of landscaping, berms, and retaining walls. Friemel stated that there already is a berm and trees along State Street. He indicated that a 700-foot berm approximately 14 feet tall has been built along Valley Drive which he feels will provide a sufficient buffer.

Chris Townsend, the applicant's engineer, stated that he has a great deal of experience with analysis of site conditions and their impact on the surrounding area. He indicated that he had initially been engaged by the applicants to design the site and obtain the required permits from the city, the IDNR, and FEMA. Townsend stated that more recently he had been asked to provide an objective assessment of the proposed plant's impact on air, sound, and water quality. He indicated that the temporary plant has exceeded the IDNR's requirements and that the proposed enclosure of the permanent plant would address any remaining concerns.

Townsend stated that the applicant has a permit and is code-compliant with IDNR requirements for air quality. He added that a dust collector, which is not required, is already in place. He explained that occasionally a puff of dust escapes the plant, adding that when the plant is enclosed, this will no longer occur. Townsend stated that the two silos on-site have been used a total of 13 times over the past year. He added that when the plant is enclosed, they will be connected to the dust collector. He reiterated that the dust collector is not required by the IDNR but is merely a precaution.

Townsend stated that he had gone to the site with a calibrated decibel meter to monitor sound from the plant when it is in full operation. He explained that the highest decibel reading of 73 was recorded approximately 30 feet west of the temporary plant. He indicated that a car passing by on US 67 at the same location has a decibel reading of 80, and a semi-truck reads 85 decibels. Townsend stated that he attempted to take a reading at Valley Drive and Crow Creek Road, but that there was not enough noise to register on the meter. He indicated that the cars passing by on Valley Drive had a decibel reading of 80. He explained that according to the Iowa Department of Transportation, Valley Drive has an average daily traffic count of 2060, and State Street has 12,300 vehicles per day. He concluded that sound from the plant is not an issue.

Townsend explained that concern had been expressed with regard to water quality but indicated that the applicant is in compliance with IDNR permitting requirements. He stated that currently there are earth settlement basins where concrete is washed out and where it settles to the bottom. He indicated that

the clean water then trickles downstream to the east away from the creek. Townsend stated that the basins are cleaned out as needed and the concrete is removed. He explained that when the plant becomes permanent, it will include a three-tier concrete sedimentation system which will act similarly, but more efficiently.

Jim Thiel, 6855 Little Cabin Road, stated that information had been delivered to his home and that he strongly disagrees with the statements that were made. He explained that he feels that he has a unique perspective on this issue as he lives in the neighborhood and his business is located adjacent to a concrete mixing plant. Thiel stated that he bought his home approximately two years ago and was fully cognizant of the fact that nearby properties would likely be used for industrial purposes. He commented that he believes that the applicant has done a nice job with regard to landscaping and berming in order to visually enhance the site.

Thiel stated that he has experienced no negative effects as a result of the plant which is located approximately 100 feet away. He explained that his family owns a car dealership in DeWitt at which it is imperative to keep vehicles clean. He added that he has never had an issue with dust or pollutants in the air.

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

Brian Wierck, 6655 Primrose Court, asked if staff has monitored for crystalline silica. Ethan Mahler, co-applicant, stated that the products that are used are state-approved washed concrete stone, Portland cement, fly ash, and slag. Wierck stated that he has read some articles which indicate that severe exposure to crystalline silica occurs during concrete mixing. He indicated that OSHA limits an employee's exposure to crystalline silica per shift. He explained that exposure can cause silicosis, respiratory problems, and can contribute to childhood asthma. Wierck stated that he has a hard time believing that the plant will not emit any dust. He expressed concern about the proximity of the plant to an elementary school. Mahler reiterated that the dust collector contains 99.9 percent of the dust while trucks are loaded.

Matt Fitzsimmons, 6780 Little Cabin Road, asked why it is necessary to have two concrete mixing plants in such close proximity to one another. Eikenberry explained that the Board has no control over who locates a business in a certain area. Fitzsimmons stated that he believes that there must be another place to locate a concrete mixing plant. Stelk commented that he does not believe that this issue is relevant to the applicant's request.

Mark Brockway, 1424 Berryfield Court, expressed opposition to the request. He indicated that the zoning ordinance is very specific with regard to permitted uses in the I-2 district. He stated that a concrete mixing plant is not a permitted use in that district, but is allowed in the I-3 heavy industrial district.

Brockway stated that the ordinance defines the I-2 district only allows uses that operate in a 'clean and quiet manner.' He indicated that he does not believe that a concrete plant can meet this requirement.

Brockway stated that the residences along Valley Drive are in close proximity to the proposed use.

Brockway stated that the property is within the flood plain and expressed concern about the excavation and filling that is taking place on the property and may affect Pigeon Creek.

Brockway stated that when he had contacted the city about the concrete plant he had been specifically informed that the use was temporary. He added that this is why the city had received no complaints.

Brockway stated that the special use permit cannot be approved unless it meets specific criteria listed in the ordinance. He indicated that the use will affect the development of the adjacent properties, that the trucks using the plant will cause traffic problems, that the use will negatively affect property values in the area, and that the use is inconsistent with the comprehensive plan. Brockway requested that at the very least a traffic study be required to determine the impact on traffic.

David Wallace, 6890 Crow Creek Road, stated that he interprets the minutes of the February 12, 2009 meeting to mean that the temporary plant would be removed from the property once weather has prohibited its use. Soenksen explained that the temporary plant would have to be removed prior to construction of a permanent one.

Wallace stated that according to the special use permit application a proposed use must be in harmony with the area and cannot hinder or discourage the appropriate development and use of adjacent land and buildings. He stated that the precedent that would be set by approving the special use permit would encourage heavy industrial users to locate in the same area. He added that the proposed use is in complete opposition to what the city's comprehensive plan suggests for the area. McElhiney stated that the Board has the opportunity to require more of the applicants for a use that is on a site that requires a special permit rather than one where it is a permitted use. She added that the applicants would not necessarily have to enclose the plant on a site that is zoned I-3. Wallace asked if the same restrictions would be placed on future users of the adjacent properties, adding that the Board will have opened the door for heavy industrial uses if the current request is granted. He indicated that the proposed use will negatively impact residential values, adding that allowing that type of use on the vacant sites closer to their homes will further reduce that value. Wallace explained that the noise from the proposed use could preclude an office use from locating along Valley Drive. He reiterated that the proposed use is in complete contradiction to the comprehensive plan, adding that a use is required to further the goals of that plan. He indicated that the plan shows that light industrial uses were intended for the property in question. Wallace stated that no one in the area ever imagined that such a heavy industrial use would be allowed to locate in what was intended to be a light industrial area.

Wallace requested that a traffic study be completed in order to ensure the safety of the citizens and community.

Wallace reiterated that not only will the use reduce the value of the residential properties in the area, but that of the adjacent commercial properties.

Wallace asked if the applicant has established a hardship. Stelk explained that a hardship is not required to be established for a special use permit, only for a variance.

Howe stated that the I-2 General Industrial district is intended to provide lands for development by most types of industrial firms that operate in a clean and quiet manner. He indicated that the district is not limited to certain types of uses, adding that the city has a certain amount of discretion with regard to the uses that are allowed. He explained that the district allows a concrete and asphalt mixing plant as a special use.

Wallace stated that in his opinion there are other more appropriate sites for the proposed use. Stelk commented that it is not in the Board's purview to decide where a particular applicant chooses to locate a business.

Denise Wierck, 6655 Primrose Court, expressed disbelief that she must tell the Board what must be done to keep the city as it was when she moved to Bettendorf 9 years ago. She stated that when entering the city on State Street there are industrial uses and trailer park after trailer park, adding that it does not appear that the Board cares whether or not there is a bank or a cement mixing plant on every corner. She stated that the Board is lowering her property values and raising her taxes. Wierck stated that she listens to the trucks, sees the dust, and believes it is immaterial that the plant will be enclosed. She stated that the plant will cause increased traffic which will affect children playing outside their school. She stated that there are a number of cities who have prohibited similar uses. She indicated that the plant will leave an unfavorable impression of the city.

Don Johnson, 6914 Valley Drive, asked what would prevent the Board from allowing another batch plant on the property directly to the north of the subject property adjacent to Valley Drive as it has the same zoning designation with access to Valley Drive. He asked if it would be possible for the current

applicants to provide an access easement for any future user of the adjacent property to prevent him or her from using Valley Drive to access it. Connors stated that if the applicant had requested access to Valley Drive, staff would not have recommended approval as it is a more residential area. He added that approval of a plat and site development plan would be required before improvements are placed on the site and that this type of issue would be addressed at that time. Johnson requested that an easement be located along the east side of the applicant's property to provide access for a possible future industrial user to State Street rather than having it be on Valley Drive. He indicated that if an office type use were to locate on the property as is indicated in the comprehensive plan, he would not object to direct access to Valley Drive. Connors stated that he would raise this issue during site development plan review with the Planning and Zoning Commission and City Council.

Fred Dodds, 6504 Valley Drive, stated that he believes that the city has placed residents and developers at odds with one another by not following the rules that are in place. He indicated that when BFI was built there had been discussions regarding the location of industrial uses adjacent to residential ones. He stated that at that time consideration was given to increased buffer requirements and maintaining property values so that that type of situation did not recur. Dodds stated that he had trusted that the city would guard the rights of the property owners and control this type of activity. He indicated that the proposed use would be more suitable for an I-3 zoning district. He requested that the city consider all of the involved parties when making this type of decision.

Teresa Wallace, 6890 Crow Creek Road, stated that there are likely other available properties which are zoned for this type of use. She asked for clarification regarding whether or not the continuous stream of dust that she has seen will continue. Townsend explained that the entire operation will be enclosed and that a dust collector will be in operation. Wallace stated that she can hear a knocking sound from the plant that is louder than the cars. She added that she does not believe that Valley Drive was intended to handle such heavy traffic as is generated by the plant. She asked why landscaping and berming was installed on the State Street side before the Valley Drive side.

Stelk explained that landscaping would be installed according to the site development and landscape plans that must still be approved by the Planning and Zoning Commission and City Council. Wallace stated that while she was aware that the property was designated as an industrial zone, she believed that the city would adhere to the comprehensive plan and ensure that a heavy industrial use would not be allowed. She expressed concern that approval of the special use permit would set a negative precedent for the area and the uses that are allowed in the future.

Jeff McDaniel, representing Bob Carel of 6799 Ridges Court, requested that the Board not give too much credence to the fact that residents were not in attendance at the February 2009 meeting as owners of property located across the street to the south were not notified. He stated that he understands that the legal notice was technically given regarding that meeting. McDaniel stated that he believes that the application for a permanent concrete mixing facility is premature as the original Decision and Order states that the Board will review the request after one year.

McDaniel stated that a special use permit can only be granted if the applicants meet certain conditions as listed on the application, adding that he does not believe that the applicants have done so.

Bob Border, 6655 Crow Creek Road, expressed concern about the heavy traffic that will be generated by the proposed use.

Scott Gardner, 3850 East Harbor Drive, stated that he has not seen any dust or heard any noise from the plant. He expressed support for the request.

Brian Wierck asked for clarification regarding the hours of operation. Mahler explained that he would comply with any limits on hours of operation set by the city.

Tom Beck, 6888 Valley Drive, requested that the city follow the zoning ordinance and comprehensive plan.

Howe stated that he believes that the request is very straightforward, adding that while the Board typically approves special use permits there are often conditions attached. He indicated that the Board attempts to find a compromise with regard to the externalities related to a proposed use. He explained that the applicants have exceeded DNR requirements in an attempt to protect adjacent properties. Howe stated that he believes that the applicant has met all of the required conditions for a special use permit.

Stelk stated that one of the reasons the Board had granted an initial one year approval was to observe the impact of the plant on the neighborhood. He indicated that in that year, no complaints regarding the operation were received.

On motion by Voelliger, seconded by Howe, that the special use permit to allow a permanent concrete mixing facility be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:50 p.m.

These minutes and annexes approved

John Soenksen
City Planner